

## Photography Service Level Agreement

Between

**Kyle** [REDACTED]

(hereinafter referred to as the "**Photographer**")

and

**Roger** [REDACTED]

(hereinafter referred to as the "**Client**")

(Collectively the Photographer and the Client are referred to as the "**Parties**")

**Clause 1 INTRODUCTION**

1.1 The Client appoints the Photographer to render the Photography Services described in Clause 5 below.

1.2 The Photographer and the Client have reached agreement on the terms and conditions, regulating the provision of the Photography Services and wish to reduce the terms of this consensus to writing in the form of this Agreement.

**Clause 2 INTERPRETING THIS AGREEMENT**

2.1 This Agreement contains a number of words and phrases which have specific meanings denoted by such words being capitalised.

█ [REDACTED]

█ [REDACTED]

2.4 Unless this Agreement indicates to the contrary, any references to any gender includes the other gender, a natural person includes an artificial person and vice versa, the singular includes the plural and vice versa.

2.5 The contra proferentem rule, or rule of construction that this Agreement shall be interpreted against the Party responsible for the drafting or preparation of this Agreement, shall not apply.

2.6 Where in this Agreement, provision is made for the Parties (or either of them) to agree on or grant approval in respect of any matter, such agreement or approval shall only be valid and binding on the Parties thereto if reduced to writing and signed by the duly authorised representative of such Parties.

█ [REDACTED]

█ [REDACTED]



(c) will use the other Party's Confidential Information solely in the exercise of the rights and obligations under this Agreement and for no other purpose.

[REDACTED]

3.5 "Fees" means the fees as payable by the Client to the Photographer in respect of the Photography Services rendered as set out in Clause 11;

3.6 "Intellectual Property" [REDACTED]

3.7 "Interruption" [REDACTED]

3.8 "Interrupted Party" means a Party prevented or restricted directly or indirectly from carrying out all or any of its obligations under this Agreement by reason of an Interruption Event;

3.9 "Losses" means all losses (including, but not limited to, those in respect of injury, damage to physical property or loss of life), liabilities, costs, expenses, fines, penalties, damage, and claims, and all related costs and expenses (including legal fees on the scale as between attorney and own client, tracing and collection charges, costs of investigation, interest and penalties);

3.10 "Parties" means the Photographer and the Client ("Party" shall have a corresponding meaning);

3.11 "Photographer" [REDACTED]

3.12 "Photography Services" [REDACTED]

3.13 "Service Variation" means a material change in the Photography Services, at the reasonable discretion of the Photographer, the process of which is set out in Clause 8 below;

3.14 "Term" means the duration of this Agreement being the duration of specific event(s)/ shoot(s) from the Commencement Date; and

3.15 "Termination Date" means the date upon which this Agreement is terminated which will be when the event(s)/ shoot(s) are over, or when full payment is made, whichever is later;

#### **Clause 4 DURATION**

4.1 This Agreement shall commence on the Commencement Date and terminate on Termination Date unless terminated earlier in accordance herewith.

4.2 The event(s)/shoot(s) will be on 7 January 2020 and 8 Jananuru 2020 at Wedding of Kyle and Richelle.

#### **Clause 5 THE PHOTOGRAPHY SERVICES**

5.1 The Photography Services as rendered by the Photographer to the Client shall comprise the following:

5.1.1 Wedding photographs.

5.2 The Photographer will render their Photography Services at 1 event(s)/shoot(s).

5.3 The Photographer will provide Client with edited photographs.

5.4 The Client and the Photographer agree that cooperation and punctuality are essential to accomplish the goals and wishes of all parties. If the Client does not arrive at the appointed time for the event(s)/ shoot(s), any additional time spent beyond the scheduled end time will be billed to the Client. In this regard, such additional time spent shall be entirely at the discretion of the Photographer.

#### **Clause 6 SCHEDULE**

6.1 The client agrees to confirm the schedule 7 weeks prior to the event(s)/ shoot(s). Notification of any changes in schedule or location must be made in a timely manner and confirmation of receipt must be obtained from the Photographer by the Client.

#### **Clause 7 DELIVERY**

7.1 The Photographer will make available edited photographs, on 30 November 2020 via Dropbox.

7.2 The Photographer is not liable to provide the Client with every photograph taken at the event(s)/ shoot(s). The determination of photographs delivered to the Client is left to the discretion of the Photographer.

**Clause 8 SERVICE VARIATION**

8.1 Should there exist a Service Variation determined at the reasonable discretion of the Photographer, the Photographer reserves its right to alter the Fees as deemed reasonably necessary by the Photographer.

8.2 In the above regard, the Photographer shall obtain the written consent of the Client to effect any adjustment in Fees in terms of the Service Variation.

8.3 To the extent that the Client does not consent to the change in Fees, the Photographer shall not be required to continue with the Photography Services as per the Service Variation.

**Clause 9 INTELLECTUAL PROPERTY**

9.1 All rights, titles and/or interest attached to or related to Intellectual Property as belonging to the Photographer shall remain vested in the Photographer.

9.2 All rights, titles and/or interest attached to or related to Intellectual Property as belonging to the Client shall remain vested in the Client.

9.3 All right, titles and/or interest attached to or related to Intellectual Property as produced by the Photographer in the course and scope of providing the Photography Services to the Client shall vest in the Client on full payment of the Fees associated therewith.

**Clause 10 SERVICE LEVELS**

10.1 The Photographer hereby undertakes to ensure that the standard of the Photography Services it shall render to the Client in terms of this Agreement shall be in accordance with Clause 5 of this Agreement, and further that such Photography Services shall be performed in a timeous manner.

**Clause 11 FEES**

11.1 Payment as consideration for the Photography Services to rendered by the Photographer in terms of this Agreement of Fees shall be effected Once Off, on 31 October 2020 the amount of R15,000.

11.2 Payments will be effected by the following method(s):

11.2.1 EFT

11.2.2 Credit card .

11.3 The Client agrees that it shall pay all of the Photographer's expenses in recovering any amounts the Client owes the Photographer, including legal costs on an attorney and own client scale, collection charges and tracing fees, and VAT thereon (if applicable).

**Clause 12 EXPENSES**

12.1 The Client is not responsible for all travel, accommodation, meal and transport costs unless provided by the Client.

**Clause 13 POST PRODUCTION AND EDITING**

13.1 The final post production and editing styles, effects, and overall look of the photographs are left at the discretion of the Photographer.

13.1.1 The Client may request additional editing after the final edits have been completed, which shall be charged at a cost at the discretion of the Photographer.

**Clause 14 TERMINATION**

14.1 Either Party to this Agreement may terminate the Agreement in accordance with Clause 8 above.

14.2 In addition, either Party may immediately terminate this Agreement by giving written notice to the other Party if the other Party is insolvent or has a petition brought by or against it under the insolvency laws of any jurisdiction, if the other Party makes an assignment for the benefit of creditors, if a trustee, or similar agent is appointed with respect to any property or business of the other Party, or in the case of the Client, if the Client materially breaches its obligations to make payment pursuant to this Agreement.

14.3 Notwithstanding the foregoing, either Party may terminate this Agreement for any reason or not reason by providing the other Party with one month's written notice of such termination.

**Clause 15 MODEL RELEASE**

15.1 The Client hereby assigns to the Photographer the irrevocable and unrestricted right to use and publish photographs of the Client or in which the Client may be included, for editorial, trade, advertising, educational and any other purpose and in any manner and medium; to alter the same without restriction; and to copyright the same without restriction. The Client releases all claim to profits that may arise from use of photographs.

**Clause 16 PUBLICATION**

- 16.1 The photographs produced by the Photographer are protected by Copyright Law and may not be reproduced in any manner without the Photographer 's explicitly written permission.
- 16.2 The Photographer grants the Client permission to share the photographs on social networking websites, publicly, and with family and friends as long as the photographs remain unaltered and textual credit is explicitly given to the Photographer.
- 16.3 The Client grants the Photographer permission to share the photographs on social networking websites, and with colleagues internally.
- 16.4 The Client must obtain written permission from the Photographer prior to selling any photographs, which consent may be withheld at the sole discretion of the Photographer.

**Clause 17 PERMITS**

- 17.1 The Client is responsible for acquiring all permits and necessary permission for all locations on which the Photographer will be performing the Photography Services.

**Clause 18 VENUE AND LOCATION LIMITATIONS**

- 18.1 The Photographer is limited by the rules and guidelines of any location(s) and site management (to the extent that same apply). The Client agrees to accept the technical results of their imposition on the Photographer. Negotiation with the officials for moderation of guidelines is the Client's responsibility; the Photographer will offer technical recommendations only.

**Clause 19 SAFETY**

- 19.1 The Photographer reserves to right to terminate the Photography Services and leave any location if the Photographer experiences inappropriate, threatening, hostile or offensive behavior from person(s) at the location; or in the event that the safety of the Photographer is in question.

**Clause 20 CONFIDENTIALITY**

- 20.1 Neither Party shall, without the prior written consent of the other Party (which consent may, for the avoidance of doubt, be withheld in the unfettered discretion of the Party called upon to disclose the Confidential Information) disclose such Confidential Information to any person, and/or make use of such Confidential Information for any purposes other than in connection with the rendering of the Photography Services.
- 20.2 The Party receiving the Confidential Information may disclose same to its officers, employees and subcontractors but only to the extent required for

the purposes of the rendering of the Photography Services pursuant to the provisions hereof.

20.3 The Party receiving the Confidential Information shall inform any officer, employee or subcontractor to whom it discloses such Confidential Information, that such information is confidential and shall instruct them to keep it confidential and not to disclose it to any third party (other than those persons to whom it has already been disclosed in accordance with the terms of this Agreement), on the basis that the party disclosing the Confidential Information is responsible for any disclosure, in breach of this clause, by the person to whom it is disclosed.

20.4 Notwithstanding the provisions of this clause :

20.4.1 either Party may make reference to this Agreement, the Parties' identities and a general description of the Photography Services rendered pursuant to and in terms of this Agreement, unless such information is explicitly and specifically identified as Confidential Information on written notice by either Party to the other; and

20.4.2 either Party shall be entitled in its discretion from time to time to publish and/or to make known to members of the public, including (without limitation) its shareholding, the details of its financial performance, its financial performance forecast and the Party's strategic planning.

**Clause 21 LIABILITY AND INDEMNITY**

21.1 Disclaimers and limitation of liability:

21.1.1 To the fullest extent permissible by law, the Photographer disclaims all warranties, any representations of fitness for purpose of any kind, whether express or implied in respect of the Photography Services and the Client utilises the Photography Services at its own risk.

21.1.2 The Client agrees that the Photographer is unable to, and is not required to, guarantee a particular result or set of commercial results.

21.1.3 The Client agrees the Photographer shall not be liable for any Losses however arising and whatever the cause including, but not limited to, Losses arising as a result of the Client's negligence, and/or failure to furnish the Photographer with adequate information it requires in order to render the Photography Services.

21.1.4 The Client irrevocably waives any claims it may have against the Photographer arising out of, or related to (and agrees not to institute any proceedings in respect of), the Photography Services or this Agreement more than 1 year after the cause of action relating to such claim or legal action arose.

21.2 The Client hereby indemnifies the Photographer from any Losses, which may arise as a result of the Client's unlawful conduct, wilful misconduct, negligence and/or gross negligence.

**Clause 22 BREACH**

22.1 Subject to any other provision of this Agreement providing for the remedy of any breach of any provision hereof, should either Party ("the Offending Party") commit a breach of any provision of this Agreement and fail to remedy such breach within 10 days of receiving written notice from the other Party ("the Aggrieved Party") requiring the Offending Party to do so, then the Aggrieved Party shall be entitled, without prejudice to its other rights in law to -

22.1.1 terminate this Agreement, provided the breach in question is a breach going to the root of this Agreement; or

22.1.2 claim specific performance of all of the Offending Party's obligations whether or not due for performance, in either event, without prejudice to the Aggrieved Party's right to claim damages.

**Clause 23 DISPUTES**

23.1 In the event of any dispute or difference arising between the Parties relating to or arising out of this Agreement, including the implementation, execution, interpretation, rectification, termination or cancellation of this Agreement, the chief executive officers of the Parties or any of their designated officials shall upon request by any Party meet to attempt to settle such dispute or difference, and failing settlement within a period of 7 (seven) business days from such a request, the said dispute or difference shall on demand by any Party be heard in the Magistrates Court in the area where the Photographer resides.

**Clause 24 GOVERNING LAW AND JURISDICTION**

24.1 This Agreement shall be governed in all respects by and shall be interpreted in accordance with the laws of the Republic of South Africa and the Parties hereby consent and submit to the non-exclusive jurisdiction of the, appropriate South Africa court in which the Photographer is domiciled.

**Clause 25 INTERRUPTION EVENT**

25.1 An Interrupted Party shall be relieved of its obligations in terms of this Agreement during the period that the Interruption Event and its consequences continue, only to the extent so prevented, and shall not be liable for any Losses which the other Party may suffer as a result.

- 25.2 The Interrupted Party shall notify the other Party of an Interruption Event in writing as soon as it becomes reasonably aware of the Interruption Event as such.
- 25.3 In the event that an Interruption Event exceeds -
- 25.3.1 20 (twenty) consecutive days, and in the event that alternative Photography Services and/or facilities cannot be provided by the Interrupted Party or its nominee, the Parties agree to meet and negotiate the suspension, termination or restructuring of this Agreement; or
- 25.3.2 3 (three) consecutive months, and in the event that alternative Photography Services and/or facilities cannot be provided by the Interrupted Party or its nominee, either Party may terminate this Agreement and shall only remain liable for performance under this Agreement which fell due immediately prior to the Interruption Event.

**Clause 26 DOMICILIUM AND NOTICES**

- 26.1 The Parties choose domicilium citandi et executandi ("domicilium") for all purposes arising from or pursuant to this Agreement:
- 26.1.1 In respect of the Client, the address and contact details set out in Clause 3.2 above; and
- 26.1.2 In respect of the Photographer, as set out in Clause 3.11 above.
- 26.2 Any Party hereto shall be entitled to change its domicilium from time to time, provided that any new domicilium selected by it shall be an address other than a box number, and shall be in the Republic of South Africa, and any such change shall only be effective upon receipt of notice in writing by the other Party of such change.
- 26.3 All notices, demands, communications or payments intended for any Party shall be made or given at such Party's domicilium for the time being.
- 26.4 A notice sent by one Party to another Party shall be deemed to be received:
- 26.4.1 on the same day, if delivered by hand;
- 26.4.2 one day after transmission if sent by email;
- 26.4.3 on the third day after despatch, if sent by prepaid courier.
- 26.5 If any notice is sent by email, the provisions of the Electronic Communications and Transactions Act 25 of 2002 governing receipt of data messages, shall apply.
- 26.6 Notwithstanding anything to the contrary herein contained, a written notice or communication actually received by a Party shall be an adequate written

notice or communication to it notwithstanding that it was not sent to or delivered at its chosen domicilium citandi et executandi.

**Clause 27 MISCELLANEOUS**

- 27.1 Each Party hereto acknowledges that it has been free to secure independent legal advice as to the nature and effect of all of the provisions of this Agreement and that it has either taken such independent legal advice or dispensed with the necessity of doing so. Further, each Party hereto acknowledges that all of the provisions of this Agreement and the restrictions herein contained are fair and reasonable in all the circumstances and are part of the overall intention of the Parties in connection with this Agreement.
- 27.2 The Client shall not be permitted to cede, assign or otherwise transfer any or all of its rights, interests or obligations under and/or in terms of this Agreement without the prior written consent of the Photographer. The Photographer may cede, assign or otherwise transfer any or all of its rights, interests or obligations under and/or in terms of this Agreement without the written consent of the Client.
- 27.3 This Agreement constitutes the whole agreement between the Parties as to the subject matter hereof and no agreement, representations or warranties between the Parties, other than those set out herein, are binding on the Parties.
- 27.4 No addition to, variation or consensual cancellation or novation of this Agreement and no waiver of any right arising from this Agreement, or its breach or termination, shall be of any force or effect unless reduced to writing and signed by the Parties or their duly authorized representatives.
- 27.5 For the avoidance of doubt, data messages as defined in the Electronic Communications and Transactions Act No.25 of 2002 shall not constitute "writing" for purposes of this clause, whether such data message includes an electronic signature or not.
- 27.6 No latitude, extension of time or other indulgence, which may be given or allowed by a Party to another in respect of the performance of any obligation hereunder or enforcement of any right arising from this Agreement and no single or partial exercise of any right by any Party shall, under any circumstances, be construed to be an implied consent by such Party or operate as a waiver or a novation of, or otherwise affect any of that Party's rights in terms of or arising from this Agreement or estop such Party from enforcing, at any time and without notice, strict and punctual compliance with each and every provision or term hereof.
- 27.7 Each undertaking, covenant and agreement in each clause and sub-clause of this Agreement is separate and severable, and in the event that any undertaking, covenant, agreement or other provision contained herein shall be determined to be void or unenforceable or illegal in whole or in part for

any reason whatsoever, such invalidity, unenforceability or illegality shall not affect the remaining undertakings, covenants, agreements and provisions hereof which shall remain of full force and effect and binding on all Parties hereto.

27.8 This Agreement may be executed by the Parties hereto in separate counterparts, each of which when so executed shall be deemed to be an original and all of which when taken together shall constitute one and the same agreement.

**Kyle MacPhoto**

**Roger MAcClient**

---

Signature

---

Signature

Place:

Place:

Date:

Date: