

## **ALL SERVICES AND LICENSES OF LICENSOR ARE SUBJECT TO THE FOLLOWING TERMS AND CONDITIONS**

1. **DEFINITIONS:** This Agreement is by and between Weinheimer Photographic Services ("Licensor") and the commissioning party (the "Client" named on the front of this Agreement, which includes Client's representatives), Licensor's relationship with Client is that of an independent contractor. "Image(s)" means the visual and/or other forms of materials or digital information supplied by Licensor to Client. Licensor is the sole creator of the Image(s). The image(s) are Licensor's interpretation, rather than a literal copy of any concepts or layouts provided to Licensor by Client. "Service(s)" means the photography and/or related digital or other services described on the front of this Agreement that Client is specifically commissioning Licensor to perform pursuant to this Agreement. "Transmit" or "Transmission" means distribution by any device or process whereby a copy of an Image is fixed beyond the place from which it was sent. "Copyright Management Information" means the name and other identifying information of Licensor, terms and conditions for uses of the Images, and such other information that Licensor may prescribe.
2. **FEES, CHARGES AND ADVANCES:** Client and Client's representatives are jointly and severally responsible for full payment of all fees, charges 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 changes, additions or variations requested by Client. All advance payments are due prior to production.
3. **POSTPONEMENTS AND CANCELLATIONS:** If Client postpones or cancels any photography "shoot date" or other Service, in whole or in part, without first obtaining Licensor's written consent. Client shall pay Licensor 50% of Licensor's quoted fees. If Client postpones or cancels with less than two business days' prior written notice to Licensor. Client shall pay 100% of Licensor's quoted fees. Client shall in any event pay all expenses and charges incurred in connection with any postponed or canceled 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 on 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 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 shall pay overtime for crew members and assistants a) the rate of 1 1/2 times their hourly rates or fees, and if the Services extend beyond 12 hours in one day. Client shall pay overtime for crew members and assistants at the rate of double their regularly hourly rates or fees.
7. **RESHOOTS:** Client shall pay 100% of Licensor's fees and charges for any reshooting or redoing of Services requested by Client. If the Image(s) become lost or unusable by reason of defects, damage, equipment malfunction, processing, or any other technical error, prior to delivery of the Image(s) to Client, Licensor will perform appropriate Service(s) again without additional fees, provided Client advances and pays all charges, and pays all fees and charges in connection with the initial Services.
8. **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 SERVICE(S), THE IMAGES(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 attorneys' fees, cost's of investigation, and court costs arising from or relating to Client's direct or indirect use of the Image(s) or in connection with Licensor's reliance on any representations, instructions, information, or materials provided or approved by Client.
9. **RIGHTS LICENSED:** The licensed rights are transferred only upon: (a) Client's acceptance of all terms contained in this Agreement, (b) Licensor's receipt of full payment, and (c) 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 of the terms of this Agreement. Unless otherwise specifically slated on the front of this Agreement, all licenses are non-exclusive and the duration is one year from the date of Licensor's invoice and 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, 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. Client shall not assign any of its rights or obligations under this Agreement. This Agreement shall not be assignable or transferrable without the prior written consent of Licensor and provided that the assignee or transferee agrees in writing to be bound by all of the terms, conditions, and obligations of this Agreement. Any voluntary assignment or assignment 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, obtaining all net worth or financial information of any assignee and full and timely performance of all obligations and complete and substantial assurances of all future performance.
10. **PAYMENT AND COLLECTION TERMS:** Invoices from Licensor are payable upon receipt by Client. The unpaid amount of any invoice, within 10 days of the mailing date of the invoice, will incur a late payment charge of 1-1/2% per month but not in excess of the lawful maximum. In any action to enforce the terms of this Agreement, the prevailing party shall be entitled to recover their actual attorneys' fees, court costs and all other nonreimbursable litigation expenses such as expert witness fees and investigation expenses. No lawsuits pertaining to any matter arising under or growing out of this Agreement shall be instituted in any place other than the state of Licensor's principal place of business.
11. **TAX:** Client shall pay and hold Licensor harmless on account of any sales, 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 funds in the full amount of all the sums withheld or paid.
12. **RELEASES: NO MODEL, PROPERTY, TRADEMARK, OR OTHER SUCH RELEASE EXISTS FOR ANY IMAGE(S) UNLESS LICENSOR SUBMITS TO CLIENT A SEPARATE RELEASE SIGNED BY A THIRD PARTY MODEL OR PROPERTY OWNER.**
13. **ELECTRONIC RIGHTS:** No electronic publishing or use of any kind is licensed unless specifically stated on the front of this Agreement. The use rights reserved by Licensor include, without limitation, all rights of publication, distribution, display, transmission, or other use in electronic, digital and other media of any kind, now existing and yet unknown. Any rights licensed by Licensor for any use in a collective work exclude all use rights for any kind of revision of that collective work including any later collective work in the same series.
14. **MODIFICATIONS. GOVERNING LAW AND MISCELLANEOUS** This 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 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 law's of the state of Licensor's principal place of business, excluding the conflict of laws rules of that state. 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