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**General Terms and Conditions of GotPhoto, Inc.**

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## 1. Introduction

- 1.1. **Parties and Agreement.** These General Terms and Conditions (hereinafter referred to as the "Terms") are a binding contract between GotPhoto Inc., 433 Broadway, New York, NY 10013, United States ("GotPhoto") and its customers ("Studio") with regard to the provision of online Services, as defined in Sections 2.1 "Services" and 2.2 "Add-On Services" below, which assist Studios in offering and distributing their works and other services to their customers ("End Customers"). GotPhoto does not provide Services to End Customers, but exclusively to Studios for use in support of the Studio's independent commercial or professional activities.
- 1.2. **Arbitration Agreement and Class Action Waiver.** These Terms contain an arbitration provision that requires the use of arbitration on an individual basis to resolve disputes, rather than jury trials or class actions, and also limits the remedies available to you in the event of a dispute. See Section 15. "Dispute Resolution" below for full details.
- 1.3. **Entire Agreement.** The Terms constitute the entire agreement between GotPhoto and Studio concerning Studio's use of the Services. Studio's terms and conditions—including those on Studio's website or mobile application—do not bind GotPhoto unless GotPhoto has expressly agreed to their validity in writing. Agreements, in particular, verbal subsidiary agreements, commitments, guarantees and other assurances by GotPhoto's employees, only become binding upon written confirmation by GotPhoto.
- 1.4. **Privacy Notice.** GotPhoto takes the privacy of its customers very seriously. GotPhoto's information practices are described in the Privacy Notice.
- 1.5. **Data Processing Agreement.** To the extent GotPhoto collects personally identifiable information, the use and processing of such data will be in accordance with GotPhoto's data processing agreement ("DPA"). The DPA can be accessed via <https://www.gotphoto.com/data-processing-agreement/>. By using the Services and agreeing to be bound by these Terms, Studio represents and warrants that it has read and agrees to be bound by GotPhoto's DPA, which is incorporated into these Terms by reference.
- 1.6. **Eligibility.** If Studio is an individual, Studio represents and warrants that they are at least 18 years of age and are otherwise legally qualified to enter into and form contracts under applicable law. If Studio is a business entity, Studio represents and warrants that its agent agreeing to these Terms has authority to act and enter into contracts on behalf of that business entity.

## 2. Services from GotPhoto

- 2.1. **Services.** GotPhoto provides the Studio with an online platform ("GotPhoto Online Platform"), with the help of which the Studio (i) can present itself and its services as a Studio on the Internet with a subdomain chosen by it (in the form selected subdomain.gotphoto.com) or a top level domain registered and administered by itself (in either event, a "Web Presence"), and (ii) can offer and sell its photos online in the form of photo products (photographic prints, posters, printed mugs, etc.) or as digital image files ("Online Shop"). GotPhoto's provision, through the GotPhoto Online Platform, of technical services and support for Studio's Web Presence and Online Shop are collectively referred to herein as the "Services." GotPhoto acts as a pure technical service provider of the Studio. GotPhoto provides the Services to the Studio for the Studio's own business purposes as a Studio in the exercise of its independent commercial or professional activities. The transfer of use of the Services to third parties is prohibited. Details of the Services purchased by a specific Studio depend upon the bundle of Services selected by Studio at the time of its purchase (in each event, Studio's "Plan") or as updated by Studio from time to time. GotPhoto owes the Studio only the provision of those Services which are included in the Studio's current Plan.

- 2.2. **Add-On Services.** From time to time and at its discretion, GotPhoto may offer add-on services to Studios for a fee in addition to what is paid by the Studio for its Plan, such as Image Editing Services ("Add-On Services"). Insofar as the Studio commissions Image Editing Services, Section 14. "Special Terms for Commissioning Image Editing Services" shall apply. For all other Add-On Services, additional terms may apply, which shall be reviewed and agreed upon by the Studio prior to purchasing the same. Upon acceptance by Studio, the terms applicable to Add-On Services shall become part and parcel of these Terms.
- 2.3. **Uptime.** GotPhoto provides the Services to the Studio with an uptime availability of 97% on a monthly average during the operating period. Not included in the uptime calculation are maintenance windows (for example, installation of updates or upgrades) of up to 8 hours per calendar month announced by GotPhoto by e-mail. GotPhoto will notify the Studio of planned maintenance work in due time. When calculating the uptime actually achieved, failures of the Services due to events outlined in Section 2.4 "Force Majeure and Unforeseeable Events" shall not be considered. Also disregarded are non-availabilities of the Services and blockages by GotPhoto, which GotPhoto may consider necessary for security reasons, provided that GotPhoto had taken reasonable precautions for the security of the service (e.g., denial of service attack, serious security vulnerability in a used third-party software without an available patch). The same applies to the installation of urgent security updates outside of scheduled maintenance windows, which is necessary to avoid significant disadvantages.
- 2.4. **Force Majeure and Unforeseeable Events.** GotPhoto shall be released from its obligation to provide the Services and any Add-On Services if and to the extent that the service provision is disrupted or fails due to circumstances beyond GotPhoto's control and for which GotPhoto is not responsible, for example **a)** operational disruptions of any kind, including disruptions due to a network failure at the respective internet provider, **b)** mobilisation, **c)** war, **d)** terrorist attack **e)** riot, **f)** strike, **g)** natural disasters, such as earthquakes, fire, floods, **h)** sabotage, **i)** direct and indirect consequences of pandemic or epidemic, such as quarantine, border closures or other sovereign or official interventions and measures, as well as **j)** any other events unforeseeable at the time of conclusion of the contract or unpreventable by GotPhoto, whether comparable to the aforementioned examples or not ("Force Majeure Event").

As soon as GotPhoto becomes aware of such Force Majeure Event, GotPhoto shall inform the Studio thereof without undue delay in a suitable manner and shall keep Studio updated during the time a Force Majeure Event continues. The Studio undertakes to provide GotPhoto with contact details for this purpose and to keep those contact details up to date. GotPhoto shall use reasonable efforts to mitigate the impact of the Force Majeure Event. GotPhoto's obligations under the Terms shall be suspended until such time as the Force Majeure Event and its effects have ceased to prevent GotPhoto's performance of its contractual obligations under these Terms.

The contract term of the Studio's current Plan will be automatically extended by the duration of the Force Majeure Event. Should the Force Majeure Event continue for a period longer than 30 business days, either party may terminate these Terms with immediate effect.

This Section 2.4 states GotPhoto's sole obligations and Studio's exclusive remedy against GotPhoto for any type of claim related to a Force Majeure Event.

- 2.5. **Changes.** GotPhoto reserves the right to change the Services (including the system requirements) at its sole discretion. For example, such a change may occur if the change is necessary due to (i) adaptation to a new legal situation or jurisdiction, (ii) changed technical framework conditions (new browser versions or technical standards), or (iii) the protection of system security. In addition, GotPhoto may change the Services appropriately in the context of further development (e.g., deactivation of old functions, which have largely been replaced by new ones). If the change would significantly disturb the contractual balance between the parties, GotPhoto shall inform the Studio of the change as a rule at least thirty (30) days before it comes into force to give Studio an opportunity to assess the changes and cancel its Plan, if any.

### 3. Intellectual Property Rights

**GotPhoto Proprietary Rights.** Studio acknowledges that, as between Studio and GotPhoto, all right, title and interest, including all intellectual property rights, in and to the GotPhoto Online Platform, the Services and Add-On Services, including without limitation, any and all APIs, software, documentation, images, video, content, logos, page headers, custom graphics, design and user interface elements, scripts, and other materials contained therein or provided in connection therewith, and all modifications, enhancements, and updates thereto, belong to GotPhoto and its affiliates or GotPhoto's partner companies and will remain vested in GotPhoto, its affiliates or partner companies. Studio shall solely have the right to use the Services and Add-On Services in accordance with these Terms. Except as otherwise provided in these Terms, no additional rights are granted to Studio.

## 4. Legal Relationship with End Customer

- 4.1. **End Customer Relationship.** The contractual partner of the End Customer is exclusively the Studio, who acts towards them in its own name and on its own account. This shall also apply to the sale of photographs in print form or as digital image files. The Studio is solely responsible for the arrangement of the legal relationship between the Studio and the End Customer. In this respect, the Studio shall be free to determine its conditions (pricing, general terms and conditions, etc.), but shall make the necessary agreements with the End Customer for the processing of payments in accordance with Section 8.6. "Payment Processing". Due to changes in payment processing (e.g., addition of new payment methods for End Customers), it may be necessary for the Studio to adjust its agreements with the End Customer accordingly.
- 4.2. **Direct Services.** If GotPhoto wishes to offer services to the Studio's End Customers in the future in connection with the Online Shop, which require a direct customer relationship between GotPhoto and the End Customers, GotPhoto shall obtain the Studio's consent in advance. This can be done in writing, by e-mail or via the GotPhoto Online Platform.
- 4.3. **Sample Documents; NO LEGAL ADVICE.** Insofar as GotPhoto provides the Studio with templates or sample language for Studio's Web Presence or Online Shop (for example, general terms and conditions, privacy notices, and subscription disclosures) (collectively, "Templates"), Studio understands and agrees that this is done as a courtesy only and does not constitute legal advice. GotPhoto disclaims any representation or warranty that the Templates comply with the law or protect Studio against potential claims from End Customers. **Studio understands and agrees that it is Studio's exclusive responsibility to ensure its agreements with and disclosures to End Customers comply with all applicable law and, if Studio deems fit, Studio will seek the professional advice of a qualified attorney to ensure the same.**
- 4.4. **Sales Tax; Marketplace Facilitator.** The following obligations solely apply to states where marketplace facilitator legislation has been enacted. As a business, that operates a marketplace, i.e. the GotPhoto Online Platform, and contracts with the Studio to facilitate the sale of the Studio's products, GotPhoto is deemed to be a marketplace facilitator. Therefore, GotPhoto will be responsible for calculating, collecting, remitting and refunding sales tax due for transactions between the Studio and End Customers over the GotPhoto Online Platform. GotPhoto will withhold and pay any applicable sales tax to the competent tax office. For clarification purposes: any time Studio chooses to settle payments directly in cash with the End Customer, GotPhoto will only calculate, collect, remit and refund sales tax, if Studio explicitly requests invoicing and sales tax collection from GotPhoto.
- 4.5. **Invoicing.** For Studio's convenience, GotPhoto shall issue the invoices automatically in accordance with Studio's invoice information settings. Studio shall be solely responsible to ensure that the invoice information settings provided to GotPhoto comply with applicable legal requirements. GotPhoto shall have no obligation to verify such compliance.

- 4.6 **No Refunds.** Once the End Customer has placed an order in the Studio's Online Shop and such order has been processed correctly and without errors on the GotPhoto Online Platform ("Processed Order"), the Studio alone will bear the risk of the End Customer cancelling the Processed Order or requesting changes to the Processed Order. The Studio shall pay all applicable fees for a Processed Order to GotPhoto, including, but not limited to, service fees, payment processing fees, fees for Add-On Services. GotPhoto will not refund any fees paid or waive the right to receive any fees payable for a Processed Order, if an End Customer cancels or requests changes to a Processed Order.

## 5. Duties and Obligations of Studio

- 5.1. **GotPhoto User Account.** The Studio will be required to create a user account ("GotPhoto User Account") with username and password in order to access some or all of the Services (collectively, Studio's "Account Credentials"). Studio shall keep its Account Credentials confidential and safe, not make them accessible to third parties and report any loss or unauthorized access to GotPhoto without delay.
- 5.2. **Account Information.** The Studio is obliged to fill in all required mandatory fields, to furnish GotPhoto with all GotPhoto User Account information correctly and completely, to update it immediately in the event of changes (e.g., relocation) and provide the invoice information settings. Upon request by GotPhoto, the Studio shall present suitable proof of identity.
- 5.3. **Legal Compliance.** The Studio is obliged to observe all applicable regulations and laws when using the Services, including without limitation, all laws related to copyright, trademark, right of publicity, consumer protection (e.g., false advertising), privacy, and laws regulating obscenity, pornography, and illegal substances and materials. This applies in particular, to
- a) the choice of Subdomain or Top-Level Domain,
  - b) data protection consent and information obligations,
  - c) the general terms and conditions used by the Studio towards End Customers, and
  - d) the posting of content (see also Section 6. "Content Posted by Studio").
- 5.4. **Prohibitions.** The Studio represents and warrants that it will refrain from,
- a) posting content that contains malware,
  - b) using the Services as a hosting service for content which is not directly attributable to its activity as a Studio (e.g., music archive, cinema films),
  - c) to offer images in the Online Shop which are not either authored or owned by Studio, unless GotPhoto has given its consent in advance, which GotPhoto may not unreasonably withhold,
  - d) using the Services to send out spam emails, phishing emails or other fraudulent content.
- 5.5. **Backup Copies.** GotPhoto disclaims all responsibility to maintain a backup of Studio's content. It shall be incumbent upon the Studio to keep copies of the Studio content (in particular, texts and photos) posted by it and to make regular back-up copies. If the Studio breaches this obligation, GotPhoto's liability for loss of data, for which GotPhoto is responsible, shall be limited in accordance with section 12.1 Limitations.
- 5.6. **Tax Relevant Data.** The Studio is responsible for storing data in accordance with the statutory requirements (in particular, the provisions of commercial and tax law). Upon request by GotPhoto, Studio will provide GotPhoto with required tax identification.

## 6. Studio Content and Feedback

- 6.1. **Rights of Use.** The Studio hereby grants GotPhoto a worldwide, non-exclusive, royalty-free right, limited to the term of these Terms, to use the photos, texts and other content ("Studio Content") posted by the Studio on the GotPhoto Online Platform, exclusively for the purpose of providing the Services and Add-On Services. This includes storing the Studio Content on servers of a data center used by GotPhoto, reproducing it to the extent required (e.g., in backups, creation of prints), editing it (e.g., creation of thumbnails) and making it publicly accessible.
- 6.2. **Third-Party Consents.** The Studio hereby warrants to GotPhoto that the Studio holds all rights to the Studio Content and has obtained all consents, which are necessary to grant GotPhoto the rights granted in these Terms. This includes rights of use under copyright law, trademark and other labelling rights, ancillary copyrights and any necessary rights of publicity, waivers, releases, or other consents from persons depicted.
- 6.3. **Legality; No Obligation to Audit.** Furthermore, the Studio warrants to GotPhoto that the Studio Content does not violate any applicable laws or other regulations under criminal law (e.g., prohibition of the dissemination of pornography), competition law and the law for the protection of minors. GotPhoto is not obliged to actively check or monitor the Studio Content for its legality. However, if GotPhoto obtains positive knowledge of illegal Studio Content or illegal activities of the Studio, GotPhoto is entitled to temporarily interrupt the accessibility of the Services for the Studio, including as set forth in Section 7. "Blocking" below.
- 6.4. **License to Use Feedback.** Studio hereby grants to GotPhoto and its affiliates a worldwide, perpetual, irrevocable, royalty-free license to use and incorporate into the GotPhoto Online Platform, Services and Add-On Services any suggestion, enhancement, request, recommendation, correction or other feedback provided by Studio, including feedback obtained by Studio from End Customers, relating to the operation of the GotPhoto Online Platform, the Services or Add-On Services.

## 7. Blocking

- 7.1. **Blocking Due to Breach of Duty.** If the Studio (i) defaults on its payment obligation or (ii) materially breaches its contractual obligations in any other way, GotPhoto shall be entitled, at its sole discretion, to suspend the provision of Services in whole or in part until the breach of contract has ceased, for example, by taking the Web Presence in the Online Shop offline or by blocking or deleting affected images (in any such event, "Blocking"). Before Blocking, GotPhoto shall inform the Studio of the breach of contract in writing or by e-mail and request the Studio to remedy the breach or to cease and desist the prohibited conduct, unless GotPhoto cannot reasonably be expected to do so (e.g., Studio's inability to pay). The notice of breach will generally be issued at least one week prior to Blocking, except in case of imminent danger (e.g., infringing content). Blocking shall have no effect on the Studio's obligation to pay GotPhoto's fees for the use of the Services. Blocking will be lifted as soon as the infringement has ended or the suspicion of an infringement is invalidated to the full conviction of GotPhoto.
- 7.2. **Other Cases.** Clause 7.1 shall also apply if (i) third parties approach GotPhoto with a plausible allegation that the Studio's use of the Services is unlawful (e.g., Studio Content infringes third party rights) or GotPhoto has evidence to this effect based on its own knowledge, or (ii) GotPhoto has evidence that the Studio's GotPhoto User Account is being misused by third parties. Blocking shall be limited, as far as possible, to the allegedly infringing or unlawful Studio Content or activities.

## 8. Remuneration, Payment Processing and Settlement

- 8.1. **Remuneration.** The Studio shall pay GotPhoto all fees owed for the use of the Services based on Studio's Plan and any Add-On Services purchased by Studio.

- 8.2. **Subscription Plans.** The Services are offered on a subscription fee basis. The cost and provided service features depend on the Plan chosen by Studio and will be communicated to Studio at the time it purchases the Plan. If Studio purchases a Plan, Studio understands and agrees that, in addition to its first payment, Studio's credit or debit card on file will be charged for additional subscription periods (e.g., once per month) without requiring further permission or confirmation from Studio. In other words, Plans renew automatically unless cancelled in advance of the next payment period by Studio.
- 8.3. **Fees.** Dependent upon the terms of Studio's Plan, GotPhoto may charge the Studio one or more of the following categories of fees: (i) annual or monthly hosting fees for the storage of photos, billed and payable on a subscription basis; (ii) service fees for the provision of the Online Shop and processing of End Customer orders for Studio; (iii) manual order entry fees, (iv) payment processing fees and fines; (v) fees for Add-On Services; and (vi) licensing fees for specialized software, apps or plug-ins made available to Studio through the GotPhoto Online Platform. Depending on the Plan, the Service Fee is a certain percentage of the gross amount charged to the End Customer for an order. If the fees are assessed on a pro rata (e.g., portion of total sales through the Online Shop) or cost-per-sale (e.g., fee for each product purchased by an End Customer in the Online Shop) basis, GotPhoto's calculation of the numbers of sales, total sales, and other bases for determining the associated fees shall be binding upon all parties.
- 8.4. **Plan Changes and Cancellation.** To change or cancel a Plan, the Studio may either log into its GotPhoto User Account or email GotPhoto at SupportUS@gotphoto.com. The change to a Plan with a higher fee is possible at any time. Switching to a lower Plan, including a subscription fee-free plan (where available), is possible, provided that changes and cancellations are made at least one (1) week prior to the end of the contract term of the current Plan if communicated via email and at least three (3) business days before the end of the contract term of the current Plan if changed within the Studio's GotPhoto User Account. If Studio's current Plan has a minimum term, then changes will not come into effect until the expiration of such minimum term.
- 8.5. **Fee Changes.** From time to time, it may be necessary for GotPhoto to change the fees and charges in effect, including for any Plan, and GotPhoto reserves the right, in its sole discretion, to do so. In the event of fee changes, GotPhoto will notify Studio of the changes and give Studio an opportunity to terminate the Studio's Plan pursuant to Section 2.5. "Changes" above.
- 8.6. **Payment Processing.** GotPhoto works with third-party service providers (each, a "Payment Processor") to process payments for transactions which End Customers have made via the Studio's Online Shop. The Studio may be required to open an account with the Payment Processor ("Account") and accept the terms of the Payment Processor governing such Account. GotPhoto may facilitate the creation of Studio's Account. Studio agrees to give its consent, provide all documentations, and will make all declarations required to give GotPhoto access to data concerning Studio's Account, and to initiate the settlement of fees owed to Studio by End Customer ("End Customer Fees") as well as fees owed by Studio to GotPhoto ("Transaction Fees") directly from such Account pursuant to these Terms and Studio's Plan. GotPhoto may act on Studio's behalf and instruct Payment Processor to process Studio's data to settle End Customer Fees. At GotPhoto's request, Payment Processor may deduct from Studio's Account Payment Processor fees and the Transaction Fees. Notwithstanding the foregoing, Studio understands and agrees that it is solely responsible for its Account with the Payment Processor and for maintaining such Account in good standing.

GotPhoto will not have any liability to Studio for any action or inaction of the Payment Processor (including, without limitation, Payment Processor's authorization of chargebacks, refunds, fines and penalties, Payment Processor fees, or reserves or other holds placed on Studio's Account with Payment Processor). The risk of refund, chargeback, or other payment default by End Customers shall be borne by the Studio. GotPhoto is not obliged to collect payments from End Customers or Payment Processor for Studio.

- 8.7. **Payment Methods.** GotPhoto may enable Studio to offer different payment methods to End Customers in Studio's Online Shop. Available payment methods will be displayed in Studio's GotPhoto User Account. In the event that GotPhoto decides to offer an additional payment method, such payment method will be added to the available payment methods displayed in Studio's GotPhoto User Account. If GotPhoto stops providing a certain payment method for any reason, such payment method will be removed from the available payment methods listed in Studio's GotPhoto User Account. All payments, regardless of the payment method utilized by End Customer, will be processed by Payment Processor in accordance with Section 8.6. "Payment Processing".
- 8.8. **Settlement.** Unless otherwise agreed in writing or as part of the terms of Studio's Plan, GotPhoto invoices the Studio on a monthly basis. For the term of this agreement, the Studio authorises GotPhoto to collect all Transaction Fees owing from Studio to GotPhoto from the Studio's Account at the time the payment is received from the End Customer. The Studio shall make all declarations and provide all cooperation required for the collection and transfer of Transaction Fees to GotPhoto.
- In addition, GotPhoto will collect the subscription fee, fees for Add-On Services and any other additional fees (e.g., bank dispute fees) via the payment method (e.g., credit or debit card, bank transfer) on file for Studio's GotPhoto Account. The foregoing collection via the stored payment method will also apply to any Transaction Fees, which cannot be collected from the Studio's Account at the end of the month at the time of invoicing due to lack of funds. The Studio shall make payment to the account of GotPhoto designated in the Online-Invoice within 14 days of the invoice being issued, without any deduction for GotPhoto and free of fees and charges. The date of receipt of funds by GotPhoto shall be decisive for the date of payment.
- 8.9. **Online-Invoice.** GotPhoto will issue digital invoices to Studio and provide them as a downloadable and printable PDF file in the Studio's GotPhoto User Account ("Online-Invoice"). Studio will be notified by e-mail of any new Online-Invoice raised. Studio shall have no right to a digitally signed invoice. Invoices are due for payment within 14 calendar days.
- 8.10. **Taxes.** For End Customer transactions via the Studio's Online Shop fees do not include taxes and Studio shall pay, indemnify and hold GotPhoto harmless from all applicable sales/use, gross receipts, value-added, GST or other tax on the transactions contemplated herein.
- 8.11. **Default of Payment.** For all late payments, GotPhoto shall be entitled to charge interest at a rate of the lesser of 9% or the maximum amount authorized by law. GotPhoto reserves the right to claim further damage caused by default and, in the event GotPhoto is forced to initiate any collection actions against Studio for outstanding fees, Studio shall reimburse GotPhoto for all fees and expenses incurred, including without limitation, reasonable attorneys' fees. If Studio is in default with the payment of due invoices for more than 6 weeks, GotPhoto reserves the right to block Studio's access to the Services. Before proceeding with such access restrictions GotPhoto will notify Studio of the imminent danger thereof and how it can be prevented. GotPhoto will also notify Studio without undue delay once access to the Services is blocked, stating the reasons, and requesting the Studio to settle the due claims. Access to the Services shall be restored as soon as Studio has settled all outstanding and due claims of GotPhoto. Studio shall remain liable to pay applicable fees during the period its access to the Services is blocked.

## 9. Data Protection

- 9.1. **Customer Data.** As between the Studio and GotPhoto, the Studio is the owner and controller of the data of Studio's End Customers ("Customer Data") provided by the End Customer as part of a transaction with the Web Presence or Online Shop. To the extent GotPhoto has access to such Customer Data via the Services, GotPhoto shall treat the Customer Data as confidential information. Data provided by End Customer directly to GotPhoto shall not be considered Customer Data under this clause 9.



- 9.2. **Data Processing.** Insofar as the Customer Data is personal data, the following applies: GotPhoto processes the Customer Data as a service provider of Studio exclusively on behalf of and in accordance with Studio's instructions and solely for the purpose of providing the Services. GotPhoto shall take appropriate technical and organisational measures to protect the Customer Data. Studio shall remain responsible for the lawfulness of the collection, processing and use of the Customer Data in accordance with all applicable laws, including without limitation, consumer privacy legislation.
- 9.3. **Permitted Uses and Subcontractors.** GotPhoto shall have the right to use the Customer Data in aggregated or statistical form for error analysis and further development of the functions of the Services. GotPhoto also reserves the right to engage subcontractors in the provision of services (e.g., hosting, payment processing, photo labs) and may transfer Customer Data to such subcontractors to the extent necessary and permitted by law.
- 9.4. **Special Privacy Rules for Children and Students.** If Studio's content includes photos of persons under eighteen (18) years of age and/or students (e.g., if Studio is a school photographer), Studio represents and warrants that such content, and its display and/or sale via its web presence and Online Shop, complies with all applicable privacy laws regarding children and/or students, including without limitation, the Family Educational Rights and Privacy Act ("FERPA") and the Children's Online Privacy Protection Act ("COPPA").

## 10. Disclaimers

**No Warranties.** Except as expressly warranted herein, GotPhoto, on behalf of itself and its licensors and suppliers, expressly disclaims any and all warranties, express or implied, regarding the Services, arising by operation of law or otherwise, including without limitation any and all implied warranties of merchantability, fitness for a particular purpose, non-infringement, no encumbrance, or title, in addition to any warranties arising from a course of dealing, usage, or trade practice. Neither GotPhoto nor its licensors or suppliers warrants that the Services will meet your requirements, or that the operation of the Services will be uninterrupted or error-free. GotPhoto disclaims all implied liability for damages arising out of the provision of the Services pursuant to these Terms, including without limitation, mistakes, omissions, interruptions, delays, tortious conduct, errors, representations, or other defects arising out of the failure to provide the Services, whether caused by acts of commission or omission, or any other damage occurring. GotPhoto shall not be liable for any indirect, incidental, special, consequential, or punitive damages (including without limitation damages for lost profits or lost revenues), whether caused by the acts or omissions of GotPhoto, End Customers, or their agents or representatives.

## 11. Indemnification

- 11.1. **Duty to Indemnify.** Without limiting any indemnification provision of these Terms, Studio (the "Indemnitor") agrees to defend, indemnify, and hold harmless GotPhoto and its officers, directors, employees, agents, affiliates, and representatives (collectively, the "Indemnitees") from and against any and all third party claims, actions, demands, causes of action, and other proceedings (individually, "Claim", and collectively, "Claims"), all related costs, including but not limited to legal costs and fees, arising out of or relating to: (i) the relationship between Studio and GotPhoto, whether based in contract, tort, statute, fraud, misrepresentation, or any other legal theory; (ii) Studio's breach of these Terms, including without limitation any representation or warranty contained in these Terms or disclaimer thereof; (iii) Studio's access to or use of the Services; (iv) Studio's provision to GotPhoto or any of the Indemnitees of information or other data; (v) Studio's violation or alleged violation of any foreign or domestic, international, federal, state, or local law or regulation; (v) Studio's interactions and transactions with End Customers, including its handling of Customer Data; or (vii) Studio's violation or alleged violation of any third party's copyrights, trademarks, or other intellectual property or proprietary rights.

11.2. **Requirements.** As a prerequisite for the indemnification obligation pursuant to Section 11.1. "Duty to Indemnify" GotPhoto must (i) promptly inform Studio in writing of any Claims asserted by a third party, (ii) give Studio sole control over the conduct of all negotiations and litigation arising from a Claim, (iii) give Studio, at its request and expense, reasonable assistance in connection with those negotiations and such Claims. The other Indemnitees shall each have the individual right, but not the obligation, to participate through counsel of their choice in any defense by Studio of any Claim as to which Studio is required to defend, indemnify, or hold harmless any, each, and/or all Indemnitees. Studio shall not settle or compromise any Claim unless it unconditionally releases Indemnitees of all liabilities.

## 12. Limitation of Liability

12.1. **Limitations.** In no event shall GotPhoto or its licensors or suppliers be liable to Studio for any claims arising from Studio's use of the Services, including without limitation for special, incidental, or consequential damages, lost profits, lost data or confidential or other information, loss of privacy, costs of procurement of substitute goods or services, failure to meet any duty including without limitation of good faith or of reasonable care, negligence, or otherwise, regardless of the foreseeability of those damages or of any advice or notice given to GotPhoto or its licensors and suppliers arising out of or in connection with Studio's use of the Services. This limitation shall apply regardless of whether the damages arise out of breach of contract, tort, or any other legal theory or form of action. Studio agrees that this limitation of liability represents a reasonable allocation of risk and is a fundamental element of the basis of the bargain between GotPhoto and Studio. The Services would not be provided without such limitations.

12.2. **Application.** The disclaimers, waivers, and limitations in Section 12.1 "Limitations" do not in any way limit any other disclaimer of warranties or any other limitation of liability in any other agreement between Studio and GotPhoto. Some jurisdictions may not allow the exclusion of certain implied warranties or the limitation of certain damages, so some of the above disclaimers, waivers, and limitations of liability may not apply to Studio. GotPhoto's licensors and suppliers are intended third-party beneficiaries of these disclaimers, waivers, and limitations. No advice or information, whether oral or written, obtained by Studio through the Services or otherwise shall alter any of the disclaimers or limitations stated in these Terms.

## 13. Term and Termination

13.1. **Term and Termination.** These Terms may be terminated by either party with two (2) weeks' notice to the end of the term of the selected Plan, unless GotPhoto and Studio have agreed to a different notice period in a written document.

13.2. **Material Breach.** Either party may terminate these Terms for cause upon two weeks' written notice to the other party of a material breach if such breach remains uncured at the expiration of such period. For clarification purposes only, any delays or non-performance due to events outlined in Section 2.4 "Force Majeure and Unforeseeable Events" do not constitute a material breach of these Terms.

13.3. **Force Majeure.** At the occurrence of a Force Majeure Event the provisions of Section 2.4. apply.

13.4. **Form.** Notice of termination can be given

- (a) by e-mail to SupportUS@gotphoto.com or
- (b) in writing to GotPhoto, Inc., 433 Broadway, New York, NY 10013.

- 13.5. **Data at End of Contract.** At the end of the contract term, Studio can no longer access Customer Data and Studio Content. It is Studio's responsibility to export the master data of its End Customers before the end of the contract term using the export function of the Services and to store such data on its premises for further use. GotPhoto shall have no obligation to provide any further migration support (e.g., provision of certain data as an SQL dump or in a certain format). Upon termination of the contract, GotPhoto shall delete the Customer Data and Studio Content, unless GotPhoto is required by law to retain them. If deletion of data is only possible with disproportionate effort (e.g., in backups), GotPhoto shall have the right to retain the data until such time the data is automatically overwritten or can be deleted manually, provided that such data is no longer used for business purposes and the confidentiality and security of the data is ensured.

## 14. Special Terms for Commissioning Image Editing Services

- 14.1. **Scope of Application.** Insofar as Studio commissions photo editing services (e.g., removal of backgrounds, color correction, creation of composites, etc) ("Image Editing Services") from GotPhoto directly or via partner companies of GotPhoto, this Section 14 shall apply to such Image Editing Services.
- 14.2. **Obligations of Studio.** Studio shall deliver the images to be edited in the appropriate resolution and quality. Studio understands and agrees that the edited images will only be as high of quality as the originals provided by Studio.
- 14.3. **Turnaround Time.** Delivery periods and dates provided to Studio are only approximate unless GotPhoto has expressly designated them as binding in writing. If a Force Majeure Event makes it considerably more difficult or impossible to provide the Services owed by GotPhoto and if the hindrance is not only temporary, GotPhoto shall be entitled to cancel and/or terminate the Image Editing Services. In the event of temporary hindrances due to a Force Majeure Event, the deadlines agreed for the provision of the Image Editing Services shall be extended or the respective deadlines shall be postponed by the duration of the Force Majeure Event plus a reasonable restart period.
- 14.4. **Payment.** Studio shall pay GotPhoto for the Image Editing Services pursuant to Section 8 "Remuneration, Payment Processing and Settlement".
- 14.5. **Disclaimer; Limitation of Liability.** The Image Editing Services are provided on an AS-IS basis, and in addition to the disclaimers of warranty set forth in Section 10 "Disclaimers", GotPhoto disclaims any warranty that the Image Editing Services will be of a specific quality, look or feel. Studio uses the Image Editing Services at its own risk, and GotPhoto shall not be liable for any damages to Studio, Studio's relationships or contracts with its End Customers, Studio's reputation, or any third parties arising out of or in relation to the Image Editing Services (e.g., if End Customers feel the images are "over-edited" or not edited enough.) Studio's indemnification obligations shall extend to all third-party claims brought against GotPhoto relating to the Image Editing Services.
- 14.6. **Purchase from Other Companies.** If Studio orders Image Editing Services from companies other than GotPhoto or GotPhoto's partner companies, the contract for the purchase of the Image Editing Services shall not be concluded between GotPhoto and Studio but directly between Studio and the respective company. The terms and conditions of the respective company shall then apply; GotPhoto merely transmits the Studio's offer to the company.

## 15. Dispute Resolution

- 15.1. **Choice of Law; Venue for Judicial Proceeding.** These Terms, including without limitation this Agreement's interpretation, shall be treated as though this Agreement were executed and performed in the State of New York, and shall be governed by and construed in accordance with the laws of New York without regard to its conflict of law principles. The language in this Agreement shall be interpreted in accordance with its fair meaning and not strictly for or against either party. Without waiving and subject to the arbitration agreement below, the proper venue for any judicial action arising out of, relating to, or in connection with this Agreement will be the state and federal courts located in or nearest to New York, New York (a "Court of Competent Jurisdiction"). The parties stipulate, and agree to waive any objection to, the personal jurisdiction and venue of such courts, and further expressly submit to extraterritorial service of process.
- 15.2. **Binding Arbitration.** If Studio and GotPhoto cannot resolve a dispute or other claim through negotiations, the dispute or claim shall be finally and exclusively resolved by binding arbitration. This arbitration agreement is reciprocal, and any election to arbitrate by one party shall be final and binding on the other(s). The language in this Agreement shall be interpreted in accordance with its fair meaning and not strictly for or against either party. The Federal Arbitration Act governs the interpretation and enforcement of this agreement to arbitrate.

The arbitration shall be commenced and conducted through JAMS ([www.jamsadr.com](http://www.jamsadr.com)) under the Streamlined Rules, as modified by this agreement to arbitrate. All remedies available to the parties under applicable federal, state or local laws shall remain available in arbitration. The parties shall each participate in the selection of a neutral arbitrator pursuant to the Streamlined Rules. Unless Studio and GotPhoto agree otherwise in writing, the final arbitration hearing shall take place in person at the JAMS facility located in or nearest to Studio's city of residence. If Studio initiate arbitration against GotPhoto, Studio will be required to pay an initial fee of \$250. If GotPhoto initiates arbitration against Studio, GotPhoto shall pay all costs required by it of JAMS to initiate the arbitration. All other arbitration costs (including any remaining JAMS Case Management Fee and all professional fees for the arbitrator's services) shall be paid as determined by the arbitrator. If JAMS is unavailable to arbitrate a dispute or claim, Studio and GotPhoto agree to arbitrate using an alternative arbitral forum. Regardless of the outcome of the arbitration, Studio and GotPhoto will each pay their own attorneys' fees and costs unless an award of attorneys' fees is available under applicable statute. The arbitrator's award will consist of a written statement stating the disposition of each Claim. The award will also provide a concise written statement of the essential findings and conclusions on which the award is based. The arbitrator must follow applicable law, and any award may be challenged if the arbitrator fails to do so. Either party may litigate in a Court of Competent Jurisdiction to compel arbitration, to stay proceedings pending arbitration, or to modify, confirm, vacate, or enter judgment on the award entered by the arbitrator.

**The Studio acknowledges that agreeing to arbitration is an important business decision that will lead to resolving disputes that would otherwise be resolved in a court of law. The agreement to binding arbitration will preclude the Studio from suing GotPhoto in court with a jury trial. GotPhoto advises the Studio to consult with counsel as the information provided in this Section is not intended to contain a complete explanation of the consequences of arbitration.**

- 15.3. **Restrictions Against Joinder of Claims.** Studio and GotPhoto agree that any arbitration shall be limited to each Claim individually. Studio and GotPhoto agree that each may only bring claims against the other in Studio's or GotPhoto's individual capacity and not as a plaintiff or class member in any purported class or representative proceeding. If this specific provision is found to be unenforceable in a Court of Competent Jurisdiction, the Claim will still be finally and exclusively resolved by binding arbitration upon the election of either party, and any election to arbitrate by one party shall be final and binding on the other(s). In addition: (1) no arbitration shall be joined with any other arbitration, and (2) there is no right for any Claim to be arbitrated on a class-action basis or to employ class action procedures.

**Studio acknowledges that without this provision, Studio would have the right to participate in class actions.**

- 15.4 **Right to Opt-Out.** Studio may wish to opt-out of the binding arbitration provision. To opt-out Studio must notify GotPhoto within 30 days of accepting these Terms in writing of the Studio's intention to opt-out of the arbitration provision by providing the Studio's name and a clear statement of the Studio's intent to opt-out, such as "I wish to opt-out of the arbitration provision in sections 15.2 and 15.3 of the General Terms and Conditions" or words to that effect. The written intent to opt-out should be addressed by electronic mail with the subject line "Opt-out from arbitration provision" to SupportUS@gotphoto.com.

## 16. Copyright Abuses.

- 16.1. **Infringement Notices.** GotPhoto respects the intellectual property rights of others. GotPhoto follows the notice and takedown procedures in the Digital Millennium Copyright Act ("DMCA"). If you believe content located on or linked to by the Website violates your copyright, please immediately notify us by emailing us a DMCA takedown notice ("Infringement Notice"), providing the information described below. If GotPhoto takes action in response to an Infringement Notice, it will make a good faith attempt to contact the party who made the content available at the most recent email address that party provided to us. Under the DMCA, you may be held liable for damages based on material misrepresentations in your Infringement Notice. You must also make a good-faith evaluation of whether the use of your content is a fair use; fair uses are not infringing. If you are not sure if content located on or linked to by the Website infringes your copyright, you should first contact an attorney.
- 16.2. **Contents of Infringement Notices.** The DMCA requires that all Infringement Notices must include the following: (a) a signature, electronic or physical, of the copyright owner or a person authorized to act on their behalf; (b) an identification of the copyright claimed to have been infringed; (c) a description of the nature and location of the material that you claim to infringe your copyright, in sufficient detail to permit GotPhoto to find and positively identify that material; (d) your name, address, telephone number, and email address; and (e) a statement by you: (i) that you believe in good faith that the use of the material that you claim to infringe your copyright is not authorized by law, or by the copyright owner or such owner's agent; and, (ii) under penalty of perjury, that all of the information contained in your Infringement Notice is accurate, and that you are either the copyright owner or a person authorized to act on their behalf.
- 16.3. **Point of Contact.** Infringement Notices should be sent to SupportUS@gotphoto.com with the subject line "DMCA Notice". GotPhoto will respond to all DMCA-compliant Infringement Notices, including, as required or appropriate, by removing the offending material or disabling all links to the offending material.

## 17. Third-Party Content and Websites

- 17.1. **Third-Party Websites.** The Website may be linked with the websites of third parties ("Third-Party Websites"), some of whom may have established relationships with GotPhoto and some of whom may not. GotPhoto does not have control over the content and performance of Third-Party Websites. GotPhoto has not reviewed, and cannot review or control, all of the material, including computer software or other goods or services, made available on Third-Party Websites. GotPhoto disclaims all responsibility and liability for any damages or other harm, whether to Studio or to third parties, resulting from Studio's use of Third-Party Websites.
- 17.2. **No Reliance on Third-Party Content.** Opinions, advice, statements, or other information made available through the Website by third parties are those of their respective authors, and should not necessarily be relied upon. Those authors are solely responsible for their content. GotPhoto does not: (a) guarantee the accuracy, completeness, or usefulness of any third-party information accessible on or through the Website; or (b) adopt, endorse, or accept responsibility for the accuracy or reliability of any opinion, advice, or statement made by a third party through the Website.

## 18. Miscellaneous

- 18.1. **Set-Off; Retention.** The Studio shall not be entitled to set off any claims against claims of GotPhoto unless the counterclaim is undisputed or has been finally determined by an arbitrator or Court of Competent Jurisdiction. Furthermore, the Studio is not entitled to withhold payments or to suspend other obligations incumbent upon it, unless GotPhoto is in material breach of obligations due under the same contractual relationship despite written warning and has not offered adequate security.
- 18.2. **Partial Ineffectiveness.** Should any provision of these Terms be or become invalid in whole or in part, this shall not affect the validity of the remaining provisions of these Terms. The parties agree already now to replace the invalid provision with a legally permissible provision which most closely reflects the economic intention of the invalid provision. The previous sentence shall also apply in the event of an unintended omission in these Terms.
- 18.3. **Amendments.** These Terms may only be modified by a written amendment signed by an authorized executive of GotPhoto and Studio, or by the unilateral amendment of these Terms by GotPhoto.
- 18.4. **Independent Contractors.** Studio and GotPhoto are independent contractors and no agency, partnership, joint venture, or employee-employer relationship is intended or created by these Terms or the provision of the Services.
- 18.5. **No Third-Party Beneficiaries.** Except as expressly stated herein, there are no third-party beneficiaries to these Terms.
- 18.6. **Assignment.** These Terms and all of Studio's rights and obligations under it will not be assignable or transferrable by Studio without the prior written consent of GotPhoto. These Terms will be binding upon and will inure to the benefit of the parties, their successors, and permitted assigns.
- 18.7. **Headings.** The headings in these Terms are for convenience only and shall have no legal or contractual effect.

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Last update: July 1, 2024