

EQUINE PHOTOGRAPHY SERVICE AGREEMENT

Shoot is scheduled for **date agreed upon between Dark Horse Photography and Client.**

Parties:

Photographer: Dark Horse Photography

and

Client: Individual(s) who have filled out the electronic Equestrian Session Client form located on the Client Portal hosted at www.darkhorsephotog.com/equestrian-session-client-portal

Collectively, all of the above people or businesses entering into this Agreement will be referred to as the "Parties".

PURPOSE OF THE AGREEMENT

Client wishes to hire Photographer to provide photography services relating to Client's equine photography needs. Photographer has agreed to provide such services according to the terms of this Agreement.

TERMS

Package: Client chooses Photographer's **Equestrian Photograph** package.

Services: Photographer shall provide Client with (known as "Services" in this Agreement):

- **HIGH RESOLUTION PHOTOS DELIVERED VIA PIC-TIME WITHIN ONE MONTH OF THE PHOTOGRAPHY SESSION**
- **A "PREPARING FOR YOUR EQUESTRIAN SHOOT" GUIDE**
- **ONE 30 MINUTE CONSULTATION (AT CLIENT'S DISCRETION)**
- **UP TO TWO HOURS OF PHOTOGRAPHY SERVICES, INCLUDING OUTFIT CHANGES AND LOCATION CHANGES**

Photographer shall provide Client with the following additional services on an 'as needed' basis at the discretion of the Photographer:

- **ADDITIONAL PHOTOGRAPHY TIME CAN BE PURCHASED AT \$100/HR**

Schedule: If Client is more than 20 minutes late for Services, then Client forfeits his or her Services and any and all fees paid to Photographer. Photographer may, at their sole discretion,

allow Client extra time for Services if Client is late. Photographer shall send Client an invoice for any extra time Photographer stays past the allotted time for Services.

Location: Client's equine session will be held at the address provided in the electronic Equestrian Session Client form located on the Client Portal hosted at www.darkhorsephotog.com/equestrian-session-client-portal ("Location.").

Props and Clothing: Client is responsible for providing all props, décor, clothing, or other details she wishes for Photographer to photograph. Client is responsible for providing clean and wrinkle free clothing for their session.

Pre-Shoot Consultation: Photographer shall provide Client with one thirty-minute pre-Shoot consultation, as needed. The Parties shall agree on an acceptable date and time for conducting the pre-Service consultation, but the manner by which the consultation shall be conducted shall be at the discretion of the Photographer. In most instances, this consultation is conducted via phone.

Digital Product(s): Photographer shall deliver to Client digital files of photos no later than one month after the date of the photography session. Photographer shall deliver such photos to Client via digital gallery Pic-Time as agreed to by the Parties.

Photo Storage: Digital copies of photographs produced in the course of fulfilling this Agreement will be stored until delivery of final photos and/or products. After the digital gallery delivery date, Client releases Photographer from any and all liability for lost or damaged files or photographs. After three months from digital gallery delivery date, Client releases Photographer from liability for lost or damaged files or photographs, and the Client is solely responsible for the digital storage of their files.

COST, FEES AND PAYMENT

Cost: The total cost ("Total Cost") for all Services is due prior to the delivery of the digital gallery via Pic-Time.

Non-refundable deposit of \$100.00 is due in order to book session date. Deposit can be applied to a rescheduled session.

Fees: Photographer's hourly rate is **\$100** per each hour spent on Client's Services over the allotted amount of time purchased for the session. Photographer makes reasonable efforts to retouch and edit Client's photos in a tasteful and professional manner before delivery of Client's final photos. If Client requests further retouching or edits after delivery of Client's final photos, then Client agrees to pay Photographer for any additional changes Photographer makes at Photographer's hourly rate. If Client implicitly or explicitly requests Photographer to continue

Services beyond the hours set forth in this Agreement, Photographer will invoice Client for additional time. Fees include travel cost and taxes.

Travel Costs: Travel fee is \$.50 per mile of travel after the first 50 miles from zip code 75238, unless otherwise stated by photographer.

Expenses: Any expenses incurred by Photographer while providing Client with Services will be invoiced to Client in a timely manner. Such expenses include travel fees, airfare, gasoline and hotel stays for Events or ceremonies occurring 50 or more miles away from zip code 75238. Client is responsible for paying for and delivering any third-party products Client wishes Photographer to utilize by date of session booking. At Photographer's discretion, Photographer will make reasonable efforts to integrate Client's suggestions.

Late Fees: If Photographer does not receive payment from Client within fourteen calendar days of any payment date, then Client will be charged a late fee of 1.5% of the outstanding amount per each day that Photographer does not receive payment. If Photographer has made reasonable attempts to notify Client of Client's outstanding balance, and Client's balance remains unpaid or partially paid, then Photographer reserves the right to send Client to collections for any and all outstanding payments. Client agrees to pay for all Photographer's reasonable collections and legal costs encountered while attempting to collect against Client.

- For example, Client owes Photographer \$1000 due on April 1 and fails to pay by April 14th. On April 15th, Client owes Photographer \$1015. On April 16th, Client owes Photographer \$1030.23. On April 17th, Client owes Photographer \$1045.68, and so on.

Delivery: Photographer shall deliver Services in a reasonable amount of time. Client must respond to any Photographer communication within a reasonable amount of time. If Client fails to respond to Photographer within 14 calendar days; a reasonable amount of time for feedback or any other Photographer request(s), it is within the Photographer's discretion to delay or cancel a Client's Services.

INTELLECTUAL PROPERTY

Copyright: Photographer owns the copyright in any and all photos he/she takes pursuant to federal copyright law (Title 17, Chapter 2, §201-02, of the United States Code.) Any and all photographs produced in connection with, or in the process of fulfilling this Agreement, are expressly and solely owned by Photographer to use in the reasonable course of business.

Purchase of Copyright: For an additional cost of **\$200.00** per photo, Client may purchase the copyright and all rights therein to any particular photograph. This assignment of Photographer's copyright would waive any and all of Photographer's claims, rights, privileges and property ownership of the photograph and Client would no longer be bound to comply with this

Intellectual Property section of this Agreement for that particular photograph ONLY, with all other sections of this Agreement remaining in full force and effect.

Non-exclusive License: Photographer grants to Client a non-exclusive, worldwide license of photographs produced with and for Client for personal use so long as Client provides Photographer with attribution each time Client uses Photographer's property unless and until Photographer assigns her copyright to Client. Photographs will be deemed properly attributed to Photographer when it would be obvious to any reasonable observer, reader, or viewer that Dark Horse Photography LLC provided the photograph for Client's use.

Prohibited Uses of Photographs: Some uses of Photographer's property are expressly prohibited in order to maintain the integrity and quality of Photographer's reputation and work.

- Any resale of the photographs through direct or indirect means, including, but not limited to: selling the photos as stock photography; selling or allowing use of the photos by a third party such as a corporation or advertiser.
- Any illegal assignment of Photographer's work, such as allowing third party use of a photograph online or in print without attribution.
- Any use of photographs, personally or otherwise, which does not include attribution to **Dark Horse Photography LLC**
- Client expressly agrees not to produce derivative works of Photographer's property, such as, but not limited to, photographs of a photograph, scans into a computer, unauthorized photo collages or other works that incorporate a substantial portion of Photographer's property in a way that distorts or denigrates the photograph's high resolution.
- Any use deemed unreasonable or defamatory, at the discretion of Photographer.
- Any retouched or further edits of photographs that materially alters the composition of the photograph, such as by applying filters, changing the colors or other means of degradation, as determined by Photographer.
- Client will not purposefully try to hide or otherwise conceal attribution to Photographer, such as by printing attribution in such small print or font that the source of the photograph is not readily apparent to the reasonable viewer.

Trademark Ownership: Any and all trademarks, whether registered or unregistered, remain the property of the contributing Party.

RELEASES AND LIMIT OF LIABILITY

Artistic Release: Client has spent a satisfactory amount of time reviewing Photographer's work or past client reviews and has a reasonable expectation that Photographer's Services will produce a similar manner and style of aesthetic for Client. Photographer will use reasonable efforts to ensure Client's Services are carried out in a style and manner consistent with Photographer's current portfolio and Photographer will try to incorporate any suggestions Client makes. However, Client understands and agrees that:

- Every client and photoshoot is different, with different tastes, budgets, and performance needs; and
- Styling is a subjective art and Photographer is an artist with a unique vision, with an ever-evolving style and technique; and
- Photographer will use his/her personal artistic judgment to create styled areas for Client, which may not include strict adherence to Client's suggestions; and
- Dissatisfaction with Photographer's aesthetic judgment or artistic ability are not valid reasons for termination of this Agreement or request of any monies returned.
- Photographer will retouch and edit photographs as part of her Services. Photographer reserves the absolute right to decide how and why any photo is retouched or otherwise edited. Client may make retouching or editing suggestions to Photographer but Photographer is not obligated to adhere strictly to any Client suggestion.

Exclusivity: Client understands and agrees s/he has hired Photographer exclusive of any other service provider for the Services listed in this Agreement, and no other photographers, other than any assistant or third party that Photographer has hired to complete the Services, are permitted to provide the same Services, paid or unpaid, unless prior permission is granted by Photographer. Client accepts and agrees that third-party photographers, whether professional or not, may impede Photographer's access to the clients for crucial photos, and it is Client's responsibility to ensure Photographer always has the best angle and/or position as determined by the Photographer. If the Photographer feels its work is being compromised, Photographer has Client's permission to approach Client(s) to ask them to remove the obstructive party or parties.

Confidentiality: Parties will treat and hold all information of or relating to this Agreement, the Services provided, and the Parties' businesses in strict confidence and will not use any of this information except in connection with fulfilling the terms of this Agreement, and, if this Agreement is terminated for whatever reason, Parties will return all such information, including account access information, and any and all copies to the original Party and will remain bound to the Confidentiality provision of this Agreement. Confidential information (known as "Confidential Information" in this Agreement) means information that is of value to its owner and is treated as proprietary or confidential including, but not limited to, intellectual property, inventions, trade secrets or information, financial data or information, speculation, knowledge, general Company data or reports, future business plans, strategies, customer lists and information, client acquisition strategies, advertising campaigns, information regarding executives and employees, and the terms and provisions of this Agreement.

Further, at all times neither Party shall use or disclose any Confidential Information relating in any way to the past, present, or future business affairs, conditions, clients, customers, efforts, employees, financial data, operations, practices, products, processes, properties, sales, or services of or relating in any way to the Company in whatever form to any parties outside of this Agreement.

This Agreement imposes no obligation upon the Parties with respect to any Confidential Information that was possessed before initial business interactions commenced between the Parties; is or becomes a matter of public knowledge through no fault of receiving Party; is rightfully received from a third-party not owing a duty of confidentiality; is disclosed without a duty of confidentiality to a third-party by, or with the authorization of the disclosing Party; or is independently developed by either Party without prior knowledge of privileged or confidential information.

Relationship of the Parties: Photographer and any related subcontractors are not employees, partners, or members of Client's company or organization. Photographer has the sole right to control and direct the means, manner, and method by which the Services in this Agreement are performed. Photographer has the right to hire assistants, subcontractors, or employees to provide Client with its Services. Parties are individually and separately responsible for their own business operation and expenses, including securing or paying any licensing fees, insurance, taxes (including FICA), registrations, or permits. Client is not responsible for paying for any benefits, Workers Compensation, insurance, or unemployment fees to Photographer.

LIMIT OF LIABILITY

Maximum Damages: Client agrees that the maximum amount of damages s/he is entitled to in any claim of or relating to this Agreement or Services provided in this Agreement are not to exceed Photographer's Total Cost of Services as set forth in this Agreement.

Loss of Photographs: In the rare event that any or all photos are lost, such as damage to camera or equipment, stolen camera or equipment, or damaged film rolls, Photographer shall refund Client the corresponding percentage of lost photos. For example, if 30% of the original photos taken are lost, Photographer shall refund 30% of the Total Cost.

Model Release: Please see attached as Exhibit A.

Indemnification: Client agrees to indemnify and hold harmless Photographer, its related companies, parties, affiliates, agents, independent contractors, assigns, directors, employees, and officers from any and all claims, causes of action, damages, or other losses arising out of, or related to, the Services provided in this Agreement. Client agrees to either secure a reasonable amount of insurance coverage to pay for any claims, causes of action, damage, attorney fees, or other losses as a result of accident or negligence on behalf of the Parties to this Agreement, or if no insurance is secured, Client waives its right to directly or indirectly ask or force Photographer to pay for any such damages.

Assumption of Risk: Client expressly and wholly assumes the risk of the photo shoot they design and engage in with Photographer without limitation. For example, if Client desires to have Photographer shoot subject on a ski slope, Client and subjects expressly understand and

agree that there are inherent dangers involved with skiing and hold Photographer and its agents, assigns, affiliates, and contractors harmless.

Equine Liability Waiver: UNDER TEXAS LAW [Tex. Bus. & Com. Code § 1.101(1995)], AN EQUINE ACTIVITY SPONSOR OR PROFESSIONAL SHALL NOT BE LIABLE FOR ANY INJURY TO, OR THE DEATH OF, A PARTICIPANT IN EQUINE ACTIVITIES RESULTING FROM THE INHERENT RISK OF EQUINE ACTIVITIES.

Farm Animal Waiver: Horses are farm animals and as such, vary in behavior, temperament, personality, and training. Any farm animal professional who works around or handles farm animals, such as Photographer working around or handling Equines, is NOT liable for the inherent risks associated with equine activities.

Inherent Risk of Equine Activities: Client and Client's Group understands equine-related activities are inherently dangerous and involve risks that may cause serious injury and in some cases death. Client and Client's Group acknowledges there are inherent risks associated with equine activities such as described below, and hereby expressly assumes ALL risks associated with participating in such activities, including any acts of ordinary negligence. The inherent risks include, but are not limited to: the propensity of equines to behave in ways such as, running, bucking, biting, kicking, shying, stumbling, rearing, falling, or stepping on, that may result in an injury, harm, or death to persons on or around them; the unpredictability of equines reaction to such things may occur without warning or any apparent cause; the limited availability of emergency medical care; and the potential of Client or member of Client's Group to act in a negligent manner that may contribute to injury to the participant or others, such as failing to maintain control over the animal or not acting within such Client's ability.

SAFETY RESPONSIBILITIES: The Client is responsible for his or her own safety and the safety of any Group members he or she brings with him or her while engaging in any and all equine activities during the Session. Furthermore, Photographer (and its employees, agents, and independent contractors) is/are NOT liable for any injury of horse or handler during the session time or while Services are rendered.

CLIENT HAS READ, UNDERSTOOD AND RELEASES PHOTOGRAPHER FROM ALL RELATED CLAIMS OF EQUINE ACTIVITY AND ORDINARY NEGLIGENCE IN THE COURSE OF PHOTOGRAPHER'S SERVICES:

[CLIENT INITIALS]

Provided digitally via checkbox in the electronic Equestrian Session Client form located on the Client Portal hosted at www.darkhorsephotog.com/equestrian-session-client-portal

Non-disparagement: The Parties mutually agree not to make public defamatory statements that would materially harm the reputation or business activities of any Parties to this Agreement.

CANCELLATIONS OR RESCHEDULING

Client Desires to Cancel or Reschedule: If the Client desires to cancel or reschedule Services of Photographer for any reason at any time, then Client shall provide at least 14 days notice for sessions requiring travel within 100 miles of zip code 75238 and 30 days notice for sessions requiring travel greater than 100 miles of zip code 75238 to Photographer in order to cancel this contract. Providing Notice will not relieve Client of any currently outstanding payment obligations. Photographer will not be obligated to refund any portion of monies Client has previously paid to Photographer. Photographer is able to re-book further services on or before Client's final delivery date, Client may be issued a credit for future services with Photographer at Photographer's discretion. Photographer has no obligation to attempt to re-book further Services to make up for Client's cancellation or rescheduling.

Photographer Desires to Cancel or Reschedule: In the event Photographer cannot or will not perform his/her obligations in any or all parts of this Agreement, Photographer (or a responsible party) will immediately give Notice to Client, and at the Photographer's discretion, either attempt to find a reasonable substitute to fulfill the terms of this Agreement or issue a refund or credit based on a reasonably accurate percentage of Services rendered. In the case of a refund where, at the discretion of the Photographer, no reasonable substitute is found, Photographer shall excuse Client of further performance obligations in this Agreement.

Weather Delay: In the event of a rain or weather delay, Client will be notified within 24 hours of any scheduled service that Services may be reasonably altered or rescheduled to fit the circumstances of the situation at the discretion of the Photographer.

Force Majeure: Either Party may choose to be excused of any further performance obligations in the event of a disastrous occurrence outside the control of either Party that materially affects the performance of Services, such as: an act of God (fires, explosions, earthquakes, hurricane, natural disasters, flooding, storms, or infestation), or War, Invasion, Act of Foreign Enemies, Embargo, or other Hostility (whether declared or not), or any hazardous situation created outside the control of either Party such as a riot, disorder, nuclear leak or explosion, or act or threat of terrorism.

No-Shows: If it becomes impossible for Photographer to render Services due to the fault of the Client or parties related to Client, such as failure to provide necessary elements of the Services or failure of one or more essential parties to the Services to complete tasks in a timely manner, it is within the Photographer's sole discretion to allow for any additional time or dates to render Services. In such an event, any outstanding amount will immediately become due and payable to Photographer.

GENERAL PROVISIONS

Governing Law: The laws of Texas govern all matters arising under or relating to this Agreement, including torts.

Notice: Parties shall provide effective notice (“Notice”) to each other, including any payments or invoices, via either of the following methods of delivery at the date and time which the Notice is sent:

Email:

- Photographer’s Email: courtney@darkhorsephotog.com
- Client’s Email: Provided the electronic Equestrian Session Client form located on the Client Portal hosted at www.darkhorsephotog.com/clientportal

Severability: If any portion of this Agreement is deemed to be illegal or unenforceable, the remaining provisions of this Agreement remain in full force, if the essential provisions of this Agreement for each Party remain legal and enforceable.

Merger: This Agreement constitutes the final, exclusive agreement between the Parties on the matters contained in this Agreement. All earlier and contemporaneous negotiations and agreements between the Parties on the matters contained in this Agreement are expressly merged into and superseded by this Agreement.

Amendments: The Parties may amend this Agreement only by the Parties’ written agreement with proper Notice.

Assignment: Neither Party may assign or subcontract any rights or obligations in this Agreement without proper Notice, unless otherwise provided in this Agreement.

Titles: The titles and section headers in this Agreement are provided for convenience only and should not be construed as part of this Agreement.

Dispute Resolution: Any controversy or claim arising out of or relating to this contract, or the breach of this Agreement, will be settled by alternative dispute resolution (ADR) prior to a formal complaint. ADR includes arbitration or mediation administered by an authorized entity, such as the American Arbitration Association, in accordance with its Commercial [or other] Arbitration Rules. Any judgment on the award rendered by the arbitrator(s) or mediator(s) may be entered in any court having jurisdiction over this Agreement and related dispute resolution proceedings.

[SIGNATURES ON NEXT PAGE]

SIGNATURES

[SIGNATURE]

EIN #: 88-1437688

Courtney Duran

Photographer

[SIGNATURE]

[CLIENT'S NAME]

*Provided digitally via checkbox in the
electronic Equestrian Session Client form
located on the Client Portal hosted at
[www.darkhorsephotog.com/equestrian-
session-client-portal](http://www.darkhorsephotog.com/equestrian-session-client-portal)*

Client

EXHIBIT A: MODEL RELEASE

Future Use: Photographer may publish or submit for publication any photograph s/he owns that is produced in the course of fulfilling this Agreement for any reasonable and related purpose of Photographer's business, such as, but not limited to publication in:

- Photographer's own blog;
- third party blogs;
- magazines;
- publications;
- advertisements;
- stock photography sales; and
- any other reasonable commercial purpose.

Notification of Use: Photographer is not obligated to notify Client or anyone in photographs of Photographer's publication or other use of any photo or photos.

Model Release: Client releases her/his photo and likeness for use in any of Photographer's photos and understands these photos may be used for any purpose of or relating to Photographer's business. Client Initials:

[CLIENT INITIALS]

Provided digitally via checkbox in the electronic Equestrian Session Client form located on the Client Portal hosted at www.darkhorsephotog.com/equestrian-session-client-portal

Other subjects agree and understand as signed below:

Name:

Signature of Participant or Legal Guardian if Participant is Under 18:

[CLIENT SIGNATURE]

Provided digitally via checkbox in the electronic Equestrian Session Client form located on the Client Portal hosted at www.darkhorsephotog.com/equestrian-session-client-portal

Name:

Signature of Participant or Legal Guardian if Participant is Under 18:

[CLIENT SIGNATURE]

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