

## PHOTOGRAPHY SERVICE AGREEMENT

This Photography Service Agreement (the “Agreement”) is made by and between the homecoin website user (the “User”), the photographer (the “Photographer”) selected to take the photographs of User’s property (the “Property”), and Apaus, Inc (dba [homecoin.com](http://homecoin.com)) (“Homecoin”). The User, Photographer, and Homecoin may be referred to individually as a “Party” or collectively as the “Parties”. Any references to “Property” refer to the property and surrounding area that is to be photographed. The Agreement is effective as of the day it has been electronically accepted by both the User and Photographer (the “Effective Date”).

### RECITALS

**WHEREAS**, the User is the owner, or authorized owner representative, of the Property to be photographed; and

**WHEREAS**, the User wishes for the Photographer to take photographs of the Property in accordance with the terms and conditions of the Agreement; and

**WHEREAS**, the Photographer wants to take photographs of the Users’s Property in accordance with the terms and conditions of the Agreement; and

**WHEREAS**, all Parties are duly authorized and capable of entering into this Agreement; and

**NOW, THEREFORE**, in consideration of the above recitals and the mutual promises and benefits contained herein, and other good and valuable consideration, the receipt and sufficiency of which is acknowledged, the Parties hereby agree as follows:

#### 1. SERVICE.

Effective as of the Effective Date, Photographer agrees to photograph the User’s Property, and the User agrees to have the Photographer photograph the Property.

#### 2. COPYRIGHT & LICENSING.

The Photographer is taking the photographs as a “work made for hire”, as the term is used by United States Copyright Law, and all rights to the photographs are retained by the User. The User grants Homecoin an irrevocable, perpetual, non-exclusive, royalty-free, fully paid-up, worldwide license to the photographs, to be used in any manner that Homecoin and/or its employees deem acceptable.

### **3. CONSIDERATION.**

As consideration for the Agreement, the User agrees to make a onetime advance payment via homecoin.com to the Photographer prior to the Effective Date in the amount noted on the credit card authorization form, which is hereby incorporated by reference and a part of this agreement.

### **4. USER'S REPRESENTATIONS AND WARRANTIES.**

The User hereby represents and warrants to the Photographer as follows:

- (a) The execution, delivery, and performance of this Agreement do not violate any law or governmental rule, regulation, or order applicable to the User.
- (b) The User has received appropriate permission from all Property occupants and owners to have Photographer photograph the entire Property, including any and all interior spaces.
- (c) The Property will be free of any 'For Sale' sign (Note to User: Most MLS's prohibit the presence of any 'For Sale' sign in photographs).
- (d) The User understands and agrees that, due to legal and ethical reasons, the Photographer will not edit the photographs in a way that will erase a permanent feature of the Property or cause a mis-representation of the Property.
- (e) The User understands and agrees that they are solely responsible for the cleanup and staging of the Property. The Photographer may make minor adjustments, at their own discretion, but is not required to make any such adjustments and the Property may be shot AS IS.
- (f) The User understands and agrees that due to the inability to obtain feedback efficiently on the high number of photographs, the Photographer will decide which photographs will be used for processing and finishing.
- (g) The User understands and agrees they are solely responsible for ensuring the Photographer is able to access the Property on the day of the shoot. The User is responsible for making any special requests (e.g. inclusions or exclusions, specific angles, etc) known to the Photographer in advance of the shoot. In the absence of direction from the User, the Photographer will shoot the Property based on their experience and discretion, with typical priority given to the major rooms (e.g. living, dining, kitchen, bedroom, etc) and the front and back exteriors.

- (h) The User understands and agrees that should the Photographer be unable to photograph the Property on the day of the shoot due to an inability to access the Property or unrestrained animals on the Property, the User will be charged the full fee of the shoot.
- (i) The User understands and agrees that the Photographer is not an employee of Homecoin, is outside of the control of Homecoin, and any disputes with the Photographer shall be settled directly with the Photographer.
- (j) The User understands and agrees that all photographs uploaded to [homecoin.com](http://homecoin.com) will be removed from [homecoin.com](http://homecoin.com) after a period of 1 year has passed.

## 5. PHOTOGRAPHERS REPRESENTATIONS AND WARRANTIES.

The Photographer hereby represents and warrants to the User as follows:

- (a) Photographer maintains appropriate insurance including, but not limited to, errors and omissions insurance, professional liability insurance, and general liability insurance.
- (b) All photographs will be taken with digital single-lens reflex camera (DSLR). Photographer maintains, and will use, a wide-angle lens in any way the Photographer deems appropriate during the course of photographing the Property.
- (c) Within 24 hours of taking the photographs, Photographer will do the following:
  - 1. Upload to [homecoin.com](http://homecoin.com) one set of photographs that have been optimized to typical MLS standards,
  - 2. Provide information on how to access the print quality versions of the photographs.
- (d) All Property photographs shared by the Photographer via [homecoin.com](http://homecoin.com) and the photo sharing website shall remain accessible for the User to download for a minimum of 12 months.
- (e) All photographs provided to the User will be free of any Photographer placed writing or markings.

## **6. SQUARE FOOTAGE BASED PRICING.**

Should the User choose to purchase photographs based on the square footage of the Property, the number of finished photographs provided by the Photographer shall be at the sole discretion of the Photographer.

## **7. COMMON AREA AND COMMUNITY PHOTOS.**

Photographs of community features (e.g. clubhouse, pool, etc) are not included unless specifically agreed to by the Photographer or explicitly purchased by the User at the time of ordering. If the purchase of community features photography is not an available as an option on homecoin.com at the time of ordering, the User should arrange such photography separately with the Photographer.

## **8. CANCELLATION AND INCLEMENT WEATHER.**

Cancellation of the photography shoot by the User less than 24 hours prior to the commencement of the shoot shall incur a \$50 cancellation fee, which is to be collected by the Photographer at their discretion.

Should any event occur that delays, disrupts, or cancels the photography shoot, which is outside of the control of the User or Photographer, the shoot may be rescheduled without fee or penalty.

On the day of the photography shoot, the User or Photographer may opt to reschedule the shoot due to inclement weather. No fee or penalty shall be incurred by any Party should the shoot need to be rescheduled due to inclement weather.

## **9. INSURANCE, DAMAGES, AND CLAIMS.**

Homecoin has not, and will not at any time, verify any of the insurance policies held by the Photographer, the User, or any other party possibly involved at any point in this transaction, including any party involved before, during, or after the time at which the shooting of photographs occurs. The Photographer and the User agree to independently verify the insurance held by each other, and any other party involved, to ensure the held insurance policies are appropriate and acceptable prior to the commencement of any work or use of any third-party goods or services.

The Photographer and the User agree to indemnify, defend and hold harmless, Homecoin, its employees, and related companies from all damages (including legal costs) and claims (including, but not limited to, privacy violations, intellectual property violations, trade disparagement, defamation, and slander) that arise from this transaction.

## **10. SUCCESSORS AND ASSIGNS.**

All references in this Agreement to the Parties shall be deemed to include, as applicable, a reference to their respective successors and assigns. The provisions of this Agreement shall be binding upon and shall inure to the benefit of the successors and assigns of the Parties.

## **11. NO IMPLIED WAIVER.**

The failure of either Party to insist on strict performance of any covenant or obligation under this Agreement, regardless of the length of time for which such failure continues, shall not be deemed a waiver of such Party's right to demand strict compliance in the future. No consent or waiver, express or implied, to or of any breach or default in the performance of any obligation under this Agreement shall constitute a consent or waiver to or of any other breach or default in the performance of the same or any other obligation.

## **12. NOTICE.**

Any notice or other communication provided for herein or given hereunder to a Party hereto shall be in writing to the respective Party as follows:

To the Photographer, User, or Homecoin: Via email

## **13. GOVERNING LAW.**

This Agreement shall be governed by the laws of the state of California. In the event that litigation results from or arises out of this Agreement or the performance thereof, the Parties agree to reimburse the prevailing Party's reasonable attorneys' fees, court costs, and all other expenses, whether or not taxable by the court as costs, in addition to any other relief to which the prevailing Party may be entitled. Any dispute arising under or in connection with these terms and conditions or related to any matter which is the subject of this Agreement shall be subject to the exclusive jurisdiction of the state and/or federal courts located in San Diego, California.

## **14. SEVERABILITY.**

Whenever possible, each provision of this Agreement, will be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement is held to be invalid, illegal, or unenforceable in any respect under any applicable law or rule in any jurisdiction, such invalidity, illegality, or unenforceability will not affect any other provision or any other jurisdiction, but this Agreement will be reformed, construed, and enforced in such jurisdiction as if such invalid, illegal, or unenforceable provisions had never been contained herein.

#### **15. LEGAL REVIEW.**

All Parties have been advised to have appropriate legal counsel review this Agreement prior to acceptance.

#### **16. TERMS INCLUDED BY REFERENCE.**

The [homecoin.com](#) Terms of Use and Privacy Policy are hereby incorporated by reference and are a part of this Agreement. Should any conflict arise between the homecoin.com Terms of Use or Privacy Policy and this Agreement, the terms of this Agreement shall prevail.

#### **17. ENTIRE AGREEMENT.**

This Agreement, together with any and all other subsequently added schedules and exhibits, constitutes the final, complete, and exclusive statement of the agreement of the Parties with respect to the subject matter hereof, and supersedes any and all other prior understandings, both written and oral, between the Parties.

#### **18. HEADINGS.**

Headings used in this Agreement are provided for convenience only and shall not be used to construe meaning or intent.