

Diversity Photos Contributor Agreement

PLEASE READ THE FOLLOWING TERMS AND CONDITIONS. YOUR ACCEPTANCE OF THESE TERMS IS AN ABSOLUTE CONDITION OF YOUR USE OF THIS WEBSITE AND ITS PRODUCTS AND SERVICES.

Kaiyva, LLC d.b.a Diversity Photos (“Diversity Photos”) maintains the www.DiversityPhotos.com website and www.diversity.photos website (collectively, the “Site”). This Agreement governs the terms by which contributing photographers, videographers or other artists may upload stock photographic, video and/or other media files to the site for the purpose of having Diversity Photos act as their agent for licensing image rights to members and subscribers of the DiversityPhotos.com community and other prospective purchasers (all files uploaded by you to Diversity Photos are referred to herein as the “Content”).

This Contributor’s Agreement is in addition to the Terms of Use applicable to the Site and to the Membership Agreement. In the event of any inconsistency between this Agreement, the Membership Agreement and the Terms of Use, the terms of this Agreement shall govern.

By uploading Content, you agree to the terms of this Agreement. You agree that this Agreement applies to each Content you upload to the Site or submit during the terms of this agreement. You further agree that this agreement applies to all Content uploaded prior to the effective date of this Agreement. If you upload Content on behalf of an entity, then this Agreement applies to that entity and its affiliates. In such case, you represent and warrant that you have the authority to bind the entity to this Agreement.

By registering a contributing photographer account (“Contributor Account”), you agree to the following (the “Agreement”):

1. Account Creation and Passwords

- a. In order to register for a Diversity Photos Contributor account, you must be at least 18 years of age.
- b. You warrant that you have provided Diversity Photos with accurate, complete, and current information. You agree to correct and update that information to ensure its accuracy and completeness at all times.
- e. Upon creation of a Contributor Account, you may be asked to choose a Contributor name. You may not select or use a Contributor name of another person or a name that violates any third party’s trademark or other proprietary right, that is or may be illegal to use, that may cause confusion with respect to the person’s identity or association with other entities, or that Diversity Photos deems in its discretion to be vulgar or otherwise offensive.
- d. You acknowledge and agree that you are entirely responsible for any and all activities conducted through your Contributor Account and that Diversity Photos is authorized to accept your Contributor Name and password as conclusive evidence that you wish to upload Content pursuant to this Agreement. You agree to notify Diversity Photos immediately of any unauthorized use of your Contributor Account as well as of any other breach of security that may affect Diversity Photos. Diversity Photos shall have no liability or responsibility to monitor the provision of Content under your Contributor Account and password.

2. Intellectual Property

- a. You retain all rights, title and interest, including the copyright, in and to the uploaded Content (except for the licenses granted pursuant to this Agreement). You also retain the right to use, reproduce or display the Content as part of your professional portfolio.

3. Content Management

- a. You acknowledge that the Content you provide pursuant to this Agreement may be purchased or licensed by members of the Site with the intention that they will adhere to the terms of the applicable license agreement.
- b. By uploading Content, you grant Diversity Photos and its Members the irrevocable non-exclusive, royalty-free right, throughout the world, to use the Content for any purpose including publication, display, modification, sublicensing, and creation of derivative works, or products. You also grant Diversity Photos the right to use Content for any and all promotional purposes related to Diversity Photos and its affiliates.
- c. Diversity Photos has the right to license any Content unless and until that Content is removed from the Site.
- d. Diversity Photos reserves the right to delete, move, refuse to accept, and/or edit any Content from the Site for any reason. Content will be removed if Diversity Photos believes that the Content violates or may violate this Agreement, the intellectual property rights of others or will subject Diversity Photos or any of its officers, managers, directors or employees to legal action.
- e. Any licenses issued by Diversity Photos in respect to any uploaded Content that are later removed from the Diversity Photos website will remain in full force and effect.
- f. Notwithstanding the foregoing, Diversity Photos cannot take responsibility for the compliance by purchasers and licensees of the terms of such agreements. You agree that notwithstanding any rights you may have to pursue the licensees of such Content at law, Diversity Photos shall have no liability to you or any person claiming through you for any breach by a licensee of the terms of any agreement regarding Content. Diversity Photos will use commercial efforts to assist in the protection of your intellectual property rights, at your request and expense.

4. Compensation

- a. Diversity Photos shall pay you a commission for each valid download of a Content file by a Member. The amount of such commission is defined on the Site and may be changed by Diversity Photos at any time in Diversity Photos' sole discretion. If you do not consent to a change in the commission payments, your sole recourse is to terminate your Contributor Account.
- b. You may request a payout via PayPal or other service used by Diversity Photos when the commission due reaches the minimum threshold as stated on the Site. By closing an account before the commission due is equal to or greater than the minimum payout threshold, or by breaching any terms of this Agreement or any other agreement with Diversity Photos, your accrued earnings may be forfeited in Diversity Photos' sole discretion.
- c. If your account is cancelled for a breach of the material terms of this agreement, in addition to its other rights at law or in equity, Diversity Photos shall have the right to retain any commission

and/or other compensation otherwise payable to you hereunder as liquidated damages. If you are credited with a download or downloads and Diversity Photos thereafter issues a refund to Member that downloaded any or part of your uploaded Content, Diversity Photos shall have the right to deduct the commission credited to your account. If Diversity Photos makes an overpayment of a commission or other compensation to you for any reason, Diversity Photos shall have the right to deduct the amount of such overpayment from your accrued commission or to demand the immediate repayment of such overpaid commission or other compensation.

- d. Diversity Photos may modify the commission rate and/or payment schedule at any time and notify you by email or by an announcement on Contributing Photographer Dashboard page of the modifications. If Diversity Photos does modify the commission rate, commissions earned before the effective change in rates will be credited at the rate in effect at the time such commissions were earned.
- e. **Taxes.** You are responsible for all use, sales, value-added and similar taxes and duties imposed by any governing authority in any jurisdiction in connection with the license granted to you under this Agreement.

5. Model Releases

You agree to provide valid and accurate model releases for all Content you upload to Diversity Photos that, in Diversity Photos' judgment, contains an identifiable face or identifiable human figure or other identifiable attribute. You agree that you are solely responsible for retaining all original model releases and maintaining complete and accurate model release records. Model releases are to be electronically delivered to Diversity Photos with the uploaded Content. The submission of falsified, inaccurate or otherwise defective model releases is a material breach of this agreement and can result in the immediate termination of your account without prior notice. Model releases submitted by you shall not contain any terms inconsistent with this Agreement or any Diversity Photos Terms of Service.

6. Contributor Warranties and Responsibilities

You warrant and represent that:

- a. You are the unencumbered owner of all rights, including the copyrights, in and to your uploaded Content.
- b. Each item of your uploaded Content consists of original works and is capable of copyright protection in all countries where copyright or similar protection is available.
- c. Each item of your uploaded Content is neither obscene nor defamatory and does not infringe the copyright or any other rights of any third party, including, without limitation, trademark rights and the rights of privacy and publicity;
- d. The information contained in all model releases that you have provided is accurate and complete and that the subjects signing the releases and depicted in a Content file have voluntarily consented to publication and/or dissemination of their likenesses for all legal purposes;
- e. If any of your uploaded Content consist in whole or in part of design elements, fonts, clipart, sprites, vectors, brush tools and the like that are included in design programs (e.g., Photoshop, Illustrator, 3D Max), by uploading such Content, you warrant and represent that the end user license

agreement, terms of service or the equivalent license held by you does allow you to incorporate such elements in Content created by you, and to license such Content to Diversity Photos for the purposes set forth herein;

- f. You will not use a keyword, image title, metadata or any other reference that: a) violates any third party's trademark or other proprietary right; b) is or may be illegal to use; c) which may cause confusion with respect to another person or other entity; or d) which Diversity Photos deems in its discretion to be indecent, vulgar or otherwise offensive. Diversity Photos reserves the right to delete any vulgar, inappropriate or otherwise offensive Content, or to require the deletion thereof.
- g. You will use Diversity Photos only for lawful purposes.
- h. You will not upload pornographic content or other content which is deemed by Diversity Photos, in its sole discretion, to be inappropriate; and
- i. There is no suit action or claim or other legal or administrative proceeding now pending or threatened which might directly or indirectly affect your uploaded Content or which might in any way impair the rights granted by you hereunder.

7. Indemnification

You shall indemnify, defend and hold harmless Diversity Photos, its officers, directors, employees, partners, agents, associates, and affiliates, from any and all claims based on allegations which, if true, would constitute a breach of any of your warranties. The indemnity shall apply to any and all liabilities, losses, damages, expenses (including attorneys' fees and costs) incurred by Diversity Photos as a result of such breach or breaches. Diversity Photos reserves the right to control the defense of any claim, action or matter subject to indemnification by you with counsel of our own choosing. You will fully cooperate with us in the defense of any such claim, action or matter.

8. Control of Operations

- a. Diversity Photos, in its sole discretion, may remove any Content uploaded to the Site including those appearing to infringe the intellectual property rights of other entities.
- b. Diversity Photos reserves the right, but does not assume the responsibility, to restrict conduct which Diversity Photos deems in its discretion to be harmful to individual members, damaging to the communities that use Diversity Photos, or in violation of Diversity Photos' or any third party's rights.

9. Disclaimers

- a. Diversity Photos makes no warranty with respect to any related software or hardware used or provided by Diversity Photos. To the maximum extent permitted by law, Diversity Photos' disclaims all warranties express or implied, including the implied warranties of merchantability and fitness for a particular purpose. The limitations and exclusions in this section apply to the maximum extent permitted by law.
- b. Diversity Photos makes no warranty with respect to any guidance. Further, any guidance provided in regards to any matter, by Diversity Photos is not legal advice.
- c. Diversity Photos makes no warranty that access to the Site will be uninterrupted, timely, secure, or error free.

10.Limitation of Liability

Diversity Photos shall not be liable to the Contributor or anyone else for any special, indirect, incidental, punitive damages or consequential damages, including, without limitation, damages or loss of business, loss of data, lost profits, business interruption, or any other pecuniary loss arising from the submission or use of your uploaded Content or the termination of your Contributor account, even if Diversity Photos has been advised of the possibility of such damages. The total liability in any matter arising out of or related to this Agreement is limited to US \$100.

11.Termination

You may terminate your Diversity Photos Contributor account at any time with or without cause by notifying Diversity Photos' support staff. Diversity Photos may terminate this Agreement or remove any Content or suspend your account without prior notice for any reason or no reason. Accounts that are not accessed (logged into) for more than two (2) years may be deemed terminated at the discretion of Diversity Photos. We will have no payment obligation to you if we terminate the Agreement for cause.

12.Diversity Photos Trademarks

- a. You may not adopt or use any registered or common law Diversity Photos trademarks, which include but are not limited to all logos, service marks, trade names, Internet domain names, or other indications of origin now or in the future used by Diversity Photos ("Trademarks") for any reason without Diversity Photos' prior written consent.
- b. You will not use Diversity Photos' trademarks or variations (including misspellings) as a domain name, part of a domain name, metatag, keyword, or any other type of programming code or data.
- c. You will not use Diversity Photos' trademarks for search engine advertising and/or marketing. You acknowledge that such advertising might infringe on the intellectual property rights of Diversity Photos and/or third parties.
- d. You will not transmit unsolicited emails or engage in so-called "spamming" to publicize or promote your relationship with Diversity Photos or the sale of your Content.

13.Severability

If any provision of this Agreement is **not enforceable**, the remainder shall be unaffected and shall be enforceable by either party. To the extent any provision of this Agreement is adjudicated to be invalid or unenforceable because it is overly broad or overly restrictive, that provision shall not be void but rather shall be limited only to the extent required by applicable law and enforced as so limited. The parties expressly acknowledge and agree that this paragraph is reasonable and necessary to assure that the intent of the parties is carried out.

14. Governing Law and Jurisdiction

- a. **Governing Law.** Your relationship is with Diversity Photos, a United States company, and the Services and these terms are governed by the law of the State of Georgia. You may have additional rights under the law. We do not seek to limit those rights to the extent prohibited by law.
- b. **Dispute Resolution.** For any concern or dispute you may have, you agree to first try to resolve the dispute informally by contacting Diversity Photos. If a dispute is not resolved within 30 days of submission, you or Diversity Photos must resolve any claims relating to these terms, the Services, the Content, or the Site through final and binding arbitration, except that you may assert claims in small claims court if your claims qualify. JAMS will administrate the arbitration pursuant to its Comprehensive Arbitration Rules and Procedures. The arbitration will be held in Dekalb County, Georgia, or any other location the parties agree to. Judgment upon the award rendered may be entered and will be enforceable in any court of competent jurisdiction having jurisdiction over the parties.
- c. **No Class Actions.** You may only resolve disputes with Diversity Photos on an individual basis, and may not bring a claim as a class member in a class, consolidated, or representative action.
- d. **No Agency.** The relationship between you and Diversity Photos under this Agreement is that of independent contractors., The parties are not joint ventures, partners, principal and agent, or employer and employee. Neither party shall have the power to bind or obligate the other in any manner.

15. Entire Agreement

By using the Site, you hereby acknowledge that you have read this Agreement, understand it, and agree to be bound by its terms and conditions. You further agree that this Agreement is the complete and exclusive statement of the understanding between you and Diversity Photos. Unless otherwise agreed to in writing in a separate signed agreement, this Agreement supersedes any proposal or prior agreement, oral or written, and any other communication between users and Diversity Photos relating to the subject matter of this Agreement.

16. Revision of Agreement.

Diversity Photos reserves the right to modify these terms at any time and to notify you of modifications at the email address which you provided to Diversity Photos. If you do not agree with the changes, you may remove such Content to which you do not wish the changes to apply, or terminate your contributor account.

17. Miscellaneous.

- a. **English Version.** The English version of this Agreement will be the version used when interpreting or construing these terms.

Effective September 1, 2016