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By accessing or using the website operated at wendylacroix.ca and such other locations as made available from time to time (collectively, the "Website") and the services offered therefrom, you ("you" and, together with all persons accessing or using the Website, collectively, the "Users") signify that you have read, understand and agree to be bound by these Terms and Conditions (the "Terms and Conditions") with Wendy La Croix Portraits ("us", "we" or "our"), in all respects with respect to the Website. PLEASE READ THESE TERMS AND CONDITIONS CAREFULLY AS IT CONTAINS IMPORTANT INFORMATION REGARDING YOUR LEGAL RIGHTS, REMEDIES AND OBLIGATIONS. THESE INCLUDE, BUT ARE NOT LIMITED TO, VARIOUS LIMITATIONS AND EXCLUSIONS, AND INDEMNITIES.

Your use of the Website is subject to these Terms and Conditions. If you are not willing to be bound by each and every term or condition, or if any representation made herein by you is not true, you may not use, and must cease using, the Website.

#### TERMS OF USE

1. **Amendments to these Terms and Conditions.** We reserve the right to amend these Terms and Conditions at any time without notice to you, but we will use reasonable efforts to publish each amendment before such amendment becomes effective. We will ensure that the latest, fully-amended version of these Terms and Conditions is published on the Website. **You are responsible for regularly reviewing the Website to obtain timely notice of such amendments.** If any amendment is unacceptable to you, you may terminate the agreement between you and us regarding the use of the Website as set out in these Terms and Conditions. If you continue to use the Website after the effective date of each amendment, you will be conclusively deemed to have accepted such amended version of these Terms and Conditions.
2. **Legal Capacity.** You represent and warrant that you possess the legal right, capacity and ability to agree to these Terms and Conditions and use the Website in accordance with them. If you are an individual, you represent and warrant that you have reached the age of majority in the jurisdiction in which you reside, and that you are in any event at least 18 years old. If you are using the Website on behalf of a corporation or other organization, you represent and warrant that you have the ability to agree to these Terms and Conditions on behalf of such organization and all references to "you" throughout these Terms and Conditions will include such organization, jointly and severally with you personally.
3. **License.** We grant to you a non-exclusive, non-transferable, limited license only to use the Website, in accordance with the provisions set out in these Terms and Conditions. All rights not expressly granted to you in these Terms and Conditions are reserved by us and, if applicable, our licensors.
4. **Privacy.** You acknowledge that you have read the Privacy Statement located on the Website at <http://wendylacroix.ca/wp-content/uploads/2017/09/WEBSITE-TERMS-OF-USE.pdf> as it may be updated from time to time (the "Privacy Statement"), and hereby consent to the collection, use and disclosure by us of your personal information (whether previously collected or to be collected) for the purposes identified therein. You also consent to our use of such personal information in accordance with applicable terms and conditions contained in such Privacy Statement, which is incorporated herein by reference and forms an integral part of these Terms and Conditions.
5. **Your Account and Account Use.** If your use of the Website requires an account identifying you as a user of the Website (an "Account"), then,
  - a. **Responsibility**—you are solely responsible for
    - i. your Account and the maintenance, confidentiality and security of your Account and all passwords related to your Account, and
    - ii. any and all activities that occur under your Account, including all activities of any persons who gain access to your Account with or without your permission
  - b. **Notification**—you agree to immediately notify us of
    - i. any unauthorized use of your Account, any service provided through your Account or any password related to your Account, or
    - ii. any other breach of security with respect to your Account or any service provided through it, and
    - iii. you agree to provide assistance to us, as requested, to stop or remedy any breach of security related to your Account, and
  - c. **Accuracy**—you agree to provide true, current, accurate and complete customer information as requested by us from time to time and you agree to promptly notify us of any changes to this information as required to keep such information held by us current, complete and accurate.
6. **Website Limitations.** The Website depends on the Internet, including networks, cabling, facilities and equipment that is not in our control; accordingly (i) any representation made by us regarding access performance, speeds, reliability, availability, use or consistency of the Website is on a "commercially reasonable efforts" basis, (ii) we cannot guarantee any minimum level regarding such performance, speed, reliability, availability, use or consistency, and (iii) data, messages, information or materials sent over the Internet may not be completely private, and your anonymity is not guaranteed.
7. **Acceptable Use and Prohibitions.**
  - a. **Lawful Use.** You will ensure that
    - i. you only use the Website for lawful purposes, and
    - ii. if at any time you become aware of any violation, by any person or entity, of any part of these Terms and Conditions, you will immediately notify us and provide us with assistance, as requested, to stop or remedy such violation.
  - b. **Prohibited Conduct.** Without limiting the generality of any other restriction in these Terms and Conditions, you agree that you will not, in connection with the Website, directly or indirectly do or permit any of the following:
    - i. post, upload, reproduce, distribute or otherwise transmit any Content (defined below) that
      - A. is unauthorized or unsolicited commercial communications, junk or bulk communications or other "spam" (whether or not using e-mail services, including instant messaging, blog or comment spam) or is otherwise duplicative or unsolicited,
      - B. contains a virus, cancelbot, Trojan horse, worm or other harmful, disruptive or surreptitious component,
      - C. is defamatory, infringing, or unlawful,
      - D. is inappropriate, profane, obscene, indecent materials or information without suitable or lawfully-required access controls (which controls will in no event be our responsibility),
      - E. gives rise to civil liability, or otherwise violates the rights or assists others to violate the rights of us or any third party, such violations including engaging in copyright infringement, invasion of privacy, trademark infringement or defamation, or
      - F. constitutes a criminal offence, or otherwise engages in or assists others to engage in any criminal offence, including communicating hatred, pyramid selling, unauthorized use of a computer, mischief in relation to data, fraud, obscenity and child pornography;
      - G. engage in threats, harassment, intimidation, stalking or abuse or any conduct that violates the legal rights of others, including the rights of minors and rights relating to privacy and publicity;
      - H. scan or probe another computer system, obstruct or bypass computer identification procedures or engage in unauthorized computer or network trespass without the express permission of the owners of such computer systems;
      - I. forge headers or otherwise manipulate any protocols or identifiers used in any system or protocol in such a manner to disguise the origin of any data transmitted using the Website;
      - J. impersonate or falsely represent your association with any person, including a representative of us;
    - ii. disrupt or threaten the integrity, operation or security of any Website, any computer or any Internet system;
    - iii. disable or circumvent any access control or related process or procedure established with respect to the Website;
    - iv. sublicense, share, resell, reproduce, copy, distribute, redistribute, or exploit for any commercial purposes (except for your internal business purposes), any portion of, use of or access to, any Website, except where expressly authorized by us; or
    - v. extract, gather, collect, or store personal information about others without their express consent.

- c **Our Remedies.** Without limiting any of our rights, we may suspend, restrict or terminate your use of the Website without notice if, in our sole and absolute discretion, we determine or believe that you have violated any of the acceptable use rules set out above.
- 8 **Proprietary Rights.**
- a **Content**—"Content" means all materials and content, including designs, editorial, text, graphics, audiovisual materials, multimedia elements, photographs, videos, music, sound recordings, reports, documents, software, information, formulae, patterns, data and any other work.
- b **Third-Party Content**—Content accessed or available through the Website or the Internet may be owned by parties other than you or us (collectively, "**Third Party Content**") and may be protected by applicable copyrights, trade-marks, patents, trade secrets or other proprietary rights and laws. Nothing in your use of the Website or these Terms and Conditions grants you any right, title or interest in or to this Third Party Content except for the limited right to use the Website as set out in these Terms and Conditions. The Website may contain links to Third Party Content on websites operated by parties other than you or us ("**Third Party Websites**"). We are under no obligation to verify the accuracy of the contents on Third Party Websites, and we do not endorse, warrant, promote or recommend any services or products that may be offered by or accessed through such Third Party Websites or the operators of them.
- c **Our Content**—Except where expressly stated otherwise, all right, title and interest in and to the Website and all Content, source code, processes, designs, technologies, URLs, domain names, marks and logos forming any part of the Website (collectively, "**Our Content**") is fully vested in us, our licensors or our suppliers and are protected by applicable copyrights, trade-marks, patents, trade secrets or other proprietary rights and laws. You agree that Our Content is licensed subject to the terms of these Terms and Conditions, including the disclaimers and limitations of liability herein. Nothing in your use of the Website or these Terms and Conditions grants you any right, title or interest in or to Our Content except the limited right to use the Website as set out in these Terms and Conditions. Unless otherwise expressly authorized by us in writing, you agree not to
- i copy, modify, deep link, rent, lease, loan, sell, assign, sublicense, grant a security interest in or otherwise transfer any right or interest in Our Content
  - ii distribute, create a derivative work of, reverse engineer, reverse assemble or otherwise attempt to discover the source code, of Our Content, to the maximum extent that such prohibition is permitted by applicable law
  - iii remove any proprietary notices or labels on or in Our Content, or
  - iv allow any other person or entity to engage in any of the foregoing.
- d **Your Content**—We do not claim ownership of any Content that you post, upload, input, provide, submit or otherwise transmit to us, or any third party, using the Website (collectively, "**Your Content**"); however, you agree that by posting, uploading, inputting, providing, submitting, entering or otherwise transmitting your Content to us or any third party using the Website,
- i **License to Us**—you have thereby granted us a royalty-free, non-exclusive, worldwide, fully paid-up limited license to use, copy, distribute, transmit, display, edit, delete, publish and translate Your Content to the extent reasonably required by us to provide the Website to our customers or to ensure adherence to or enforce the terms of these Terms and Conditions,
  - ii **Your Warranty to Us**—you will have thereby confirmed, represented and warranted to us that you have all rights, titles and interests, as well as the power and authority necessary, to grant the license to Your Content set out above, and
  - iii **Your Indemnity of Us**—you will indemnify and save us harmless from and against any liabilities, actions, proceedings, claims, causes of action, demands, debts, losses, damages, charges and costs, including reasonable legal costs, any amount paid to settle any action or to satisfy a judgment and expenses of any kind and character whatsoever incurred by us relating to or arising from Your Content, including instances where the Your Content (A) infringes any Third Party Content or other third-party intellectual property rights, or (B) is inappropriate, profane, defamatory, infringing, obscene, indecent or unlawful.
- e **Advertising**—We will have the right, without notice, to insert advertising data into the Website, so long as this does not involve our transmission of any of your personal information in contravention of the Privacy Policy.
- f **Public Transmission and Caching**—You acknowledge and agree that the technical processing and transmission of the Website, including Your Content and other Content, may involve transmissions over various networks and changes to conform and adapt to technical requirements of connecting networks or devices, and that such Content may be subject to "caching" or other technical processing or transmission policies and procedures by us or at intermediate locations on the Internet.
- g **Deletion of Your Content**—If you delete the account to which Your Content is connected, you acknowledge and agree that we may retain a copy or copies of same for archival or compliance purposes or to otherwise provide the Website to you or others, subject always to your license to us set out above, and to our Privacy Policy.
- h **Compliance and Complaints**—We do not have any obligation to censor or review any of Your Content, to censor or review any Third-Party Content or to monitor use of the Website. However, you agree that we may, without notice or liability, disclose to third parties any of your information or Your Content, monitor use of the Website and monitor, review and retain Your Content if we believe in good faith that such activity is reasonably necessary to provide the Website to customers, ensure adherence to or enforce the terms of these Terms and Conditions, comply with any laws or regulations, respond to any allegation of illegal conduct or claimed violation of third party rights, or protect us or others. If we receive a complaint relating to use of the Website by you, you acknowledge and agree that we may, in our sole and absolute discretion and without notice or liability, investigate the complaint, restrict, suspend or terminate any service involved, or remove Your Content from our servers.
- 9 **Termination of Accounts.** We may, in our sole discretion, suspend, restrict or terminate your Account and your use of the Website, effective at any time, without notice to you, for any reason, including because the operation or efficiency of the Website or our or any third party's equipment or network is impaired by your use of the Website, any amount is past due from you to us, we have received a third party complaint which relates to your use or misuse of the Website, or you have been or are in breach of any term or condition of these Terms and Conditions. We will have no responsibility to notify any third party, including any third party providers of services, merchandise or information, of any suspension, restriction or termination of your access to the Website.
- 10 **DISCLAIMERS, LIMITS OF LIABILITY AND INDEMNITIES.**
- a **CUSTOMER ACKNOWLEDGEMENT**—YOU ACKNOWLEDGE AND AGREE THAT: (i) ALL USE OF THE WEBSITE PROVIDED BY US IS AT YOUR OWN RISK; (ii) THE WEBSITE MAY CONTAIN LINKS TO OTHER WEBSITES, WHICH ARE PROVIDED SOLELY AS A CONVENIENCE TO YOU AND THE INCLUSION OF ANY SUCH LINK DOES NOT IMPLY ENDORSEMENT, INVESTIGATION OR VERIFICATION BY US OF SUCH WEBSITES OR THE INFORMATION CONTAINED THEREIN; AND (iii) THE WEBSITE PROVIDED UNDER THESE TERMS AND CONDITIONS IS PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS.
- b **DISCLAIMER OF WARRANTIES**—WE MAKE NO CONDITIONS, WARRANTIES OR REPRESENTATIONS ABOUT THE SUITABILITY, RELIABILITY, USABILITY, SECURITY, QUALITY, CAPACITY, PERFORMANCE, AVAILABILITY, TIMELINESS OR ACCURACY OF THE WEBSITE OR ANY OTHER PRODUCTS SUPPLIED UNDER THESE TERMS AND CONDITIONS. WE EXPRESSLY DISCLAIM ALL CONDITIONS, WARRANTIES AND REPRESENTATIONS, EXPRESS, IMPLIED OR STATUTORY, INCLUDING IMPLIED CONDITIONS OR WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, DURABILITY, TITLE AND NON-INFRINGEMENT, WHETHER ARISING BY USAGE OF TRADE, BY COURSE OF DEALING, BY COURSE OF PERFORMANCE, AT LAW, IN EQUITY, BY STATUTE OR OTHERWISE HOWSOEVER.
- c **NO LIABILITY**—NOTWITHSTANDING ANY OTHER PROVISION OF THESE TERMS AND CONDITIONS, IN NO EVENT WILL WE, OUR AFFILIATES, OR OUR CONTROLLING PARTIES, AGENTS, EMPLOYEES, SUPPLIERS, RESELLERS AND DISTRIBUTORS (COLLECTIVELY, IN THESE CAPITALIZED SECTIONS, "**WE**" OR "**US**") BE LIABLE FOR ANY DIRECT, INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES, OR ANY OTHER DAMAGES OR LOSSES WHATSOEVER, INCLUDING DAMAGES FOR LOSS OF PROFITS, GOODWILL, OPPORTUNITY, EARNINGS, USE OR DATA, ARISING DIRECTLY OR INDIRECTLY FROM OR RELATED TO THESE TERMS AND CONDITIONS OR THE USE, OR NON-USE OF THE WEBSITE OR ANY SOFTWARE, REGARDLESS OF THE CAUSE OF ACTION AND EVEN IF ONE OR MORE OF US HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR LOSSES, INCLUDING DAMAGES OR LOSSES ARISING FROM OR IN ANY WAY RELATED TO THE FOLLOWING: (i) ANY LOSS OR DAMAGE TO DATA ARISING DIRECTLY OR INDIRECTLY OUT OF USE OR NON-USE OF THE WEBSITE OR RELATED COMPONENT; (ii) DELAYS,

ERRORS, INTERRUPTIONS, MISTAKES, OMISSIONS, NON-DELIVERY, INCORRECT DELIVERY, OR DEFECTS ON OR RELATED TO THE WEBSITE, WITHOUT RESTRICTING THE FOREGOING, IF CIRCUMSTANCES ARISE IN WHICH YOU OR ANOTHER PARTY IS ENTITLED TO RECOVER DAMAGES FROM ONE OR MORE OF US, THE AGGREGATE LIABILITY OF US FOR DAMAGES IS LIMITED TO THE AMOUNT PAID TO US BY YOU THROUGH THE WEBSITE DURING THE SIX-MONTH PERIOD PRECEDING THE CIRCUMSTANCES IN WHICH SUCH LIABILITY ARISES.

- d **APPLICABILITY**—SOME JURISDICTIONS PROHIBIT THE DISCLAIMER OF CERTAIN WARRANTIES OR CONDITIONS OR THE LIMITATION OF CERTAIN TYPES OF LIABILITY. IN SUCH CIRCUMSTANCES, TO THE EXTENT THAT SUCH PROHIBITIONS PROHIBIT ANY EXCLUSIONS AND LIMITATIONS IN THESE TERMS AND CONDITIONS, SUCH EXCLUSIONS AND LIMITATIONS WILL NOT APPLY TO YOU STRICTLY TO THE EXTENT NECESSARY TO MAKE THESE TERMS AND CONDITIONS CONSISTENT WITH SUCH PROHIBITIONS.

#### GENERAL TERMS

- 11 **Enforceability.** Your use of the Website and the content and features accessed through the Website constitute your electronic signature to the agreement set out in these Terms and Conditions and your consent to enter into agreements with us electronically. This Agreement will be deemed to satisfy any writings requirements of any applicable law, notwithstanding that the agreement set out in these Terms and Conditions is written and accepted electronically. All contracts between you and us completed electronically will be deemed for all legal purposes to be in writing and legally enforceable as a signed written agreement.
- 12 **Interpretation.** In these Terms and Conditions, (i) the captions and headings are for convenience only and do not constitute substantive matter and are not to be construed as interpreting the contents of these Terms and Conditions, (ii) the word "**including**", the word "**includes**" and the phrase "**such as**", when following a general statement or term (whether or not non-limiting language such as "without limitation" or "but not limited to" or other words of similar import are used with reference thereto), is not to be construed as limiting, and the word "or" between two or more listed matters does not imply an exclusive relationship between the matters being connected, and (iii) all references to website addresses or URLs will also include any successor or replacement websites containing substantially similar information as the referenced website(s).
- 13 **Waiver of Rights and Remedies.** Our failure to insist upon or enforce strict performance of any provision of these Terms and Conditions will not be construed as a waiver of any provision or right. Neither the course of conduct between you and us nor trade practice will act to modify any provision of these Terms and Conditions. Our rights, powers and remedies in these Terms and Conditions, including without limitation the right to suspend, restrict or terminate any use of the Website, are cumulative and in addition to and not in substitution for any right, power or remedy that may be available to us at law or in equity.
- 14 **Severability.** If any provision of these Terms and Conditions is determined to be invalid or unenforceable in whole or in part, such invalidity or unenforceability will attach only to such provision or part thereof and the remaining part of such provision and all other provisions hereof will continue in full force and effect.
- 15 **Limitation Period.** Any cause of action you may have with respect to these Terms and Conditions or the Website must be commenced within one year after the claim or cause of action arose, or it will be barred.
- 16 **Notices.** Any notice, consent, waiver, approval, authorization or other communication to be delivered in connection with these Terms and Conditions
- a by us to you will be deemed to have been effectively and validly given if delivered or sent to any of the contact particulars then listed in your Account;
  - b by you to us will only be deemed to have been effectively and validly given if in writing and delivered or submitted to [Wendy Lacroix-McRae](#).
- 17 **Assignment and Inurement.** We may at any time assign our rights and obligations under these Terms and Conditions, in whole or in part, without notice to you. You may not assign these Terms and Conditions without our prior, written consent. These Terms and Conditions will inure to the benefit of and bind you and us and our respective personal and legal representatives, successors and permitted assigns.
- 18 **Relationship.** You agree that no joint venture, partnership, fiduciary, employment or agency relationship exists between us and you as a result of these Terms and Conditions or use of the Website.
- 19 **Force Majeure.** Neither party will be responsible for a failure to fulfil its obligations under these Terms and Conditions or for delay in doing so if such failure or delay is due to circumstances beyond its reasonable control, such as acts of nature, acts of government, war, riots, strikes and accidents in transportation, but excluding a lack of financing, cash or credit.
- 20 **Entire Agreement.** These Terms and Conditions, as amended from time to time, including any and all documents, websites, rules, terms and policies referenced herein, including but not limited to the Privacy Policy, constitutes the entire agreement between us and you with respect to the matters referred to in these Terms and Conditions and supersedes all prior and contemporaneous agreements and understandings, whether electronic, oral or written, between us and you with respect to such matters.