

CLOSE TO MY HEART PHOTOGRAPHY

TERMS AND CONDITIONS

Close To My Heart Photography, a Colorado non-profit corporation, (and its related entities, successors, assigns and appointed representatives hereinafter “CTMHP”) is excited that You want to nominate a family or individual and/or receive CTMHP’s services. By submitting you understand, acknowledge and/or agree as follows:

ARTICLE ONE. PURPOSE AND DEFINITIONS

1. **CTMHP.** The purpose of CTMHP is for CTMHP photographer to capture special moments and create memories through a camera lens for those affected by terminal illness or disabling disease along with their families. CTMHP Recipients receive (at a minimum) a free portrait session with digital images, a thumb drive of images from the session, up to four canvas prints and an online gallery to view/share with family and friends.

2. **CTMHP Photographers.** CTMHP photographers are individuals, companies or organizations that (i) have completed the CTMHP application process, (ii) have been approved and selected by the Control Team, and (iii) volunteer to support CTMHP’s mission while adhering to all CTMHP terms, conditions, policies and rules. Usually, photographers are composed of highly talented professional photographers.

3. **Recipients.** CTMHP recipients are those people that (i) have been diagnosed with a terminal illness or disabling disease, (ii) have been nominated and selected by CTMHP to receive CTMHP services, and (iii) agree to and remain in compliance with all applicable terms, conditions, policies and rules (“Recipients”). CTMHP services generally include a portrait session with digital images on a thumb drive, up to four canvas prints and an online gallery to share with family and friends.

ARTICLE TWO. APPLICATION AND SELECTION PROCESS

1. **Application.** To nominate an individual(s), family or story to CTMHP and to be considered for CTMHP services, You must (i) complete the online application located on CTMHP’s website and (ii) acknowledge, agree to, comply with and understand all CTMHP terms, conditions, rules, and policies.

2. **Selection.** Nominating a story does not guarantee selection as CTMHP receives many more nominations than CTMHP has resources. CTMHP, in its sole and absolute discretion, selects nominees to receive CTMHP services depending on many varying factors which include, but are not limited to: current financial resources, CTMHP photographer availability/expertise, alignment of the story with its mission, desire of the individual(s) or family to receive such services, scheduling, etc.

ARTICLE THREE. ASSUMPTION OF RISK AND WAIVER OF LIABILITY

For the purposes of this section the term “CTMHP” includes CTMHP photographers and their assistants. You understand, acknowledge and agree as follows:

1. **Terms.** To comply with and observe the standards of conduct set forth (i) herein, (ii) in the Recipient requirements, (iii) and in any and all policies, procedures, terms and conditions published on the CTMHP website (www.closetomyheartphotography.org) which may be revised, updated or modified from time-to-time.

2. **Agency.** That You will not act as an agent or representative of CTMHP and, accordingly, shall not have or hold Yourself out as having the power or authority to bind or create liability for CTMHP by virtue of Your negligent or intentional acts or omissions.

3. **Insurance.** To obtain and maintain such health, accident, disability, hospitalization and travel insurance as You may deem necessary while receiving CTMHP services or participating with CTMHP and to be responsible for the costs of such insurance and for any expenses not covered by such insurance.

4. **Status.** To immediately disclose to CTMHP any physical, mental or emotional conditions or problems that might impair Your ability to receive CTMHP services or participate with CTMHP in any manner.

5. **Waiver and Release of Liability.** You, Your heirs, devisees, legatees, children, descendants, spouse, executors, administrators, trustees, representatives, successors, assigns, and agents (collectively, "You") release, remise, and forever discharge CTHMP, its trustees, officers, employees, agents and representatives from any and all claims, demands, injuries, damages, losses, actions, causes of action, or expenses whatsoever arising out of or connected in any way to Your involvement and/or participation with CTMHP.

6. **Assumption of Risk.** That receipt of CTMHP services or participation with CTMHP is entirely voluntary, and that You are fully aware, having sought and obtained such information and advice as You feel necessary and appropriate, that such participation involves risk of injury and property damage, including possibly short-term and long-term disability and even death. These risks can come from causes which are many and varied, may not be foreseeable, and may include negligent or intentional acts or omissions of others. You assume responsibility for any injury, loss, or damage resulting directly or indirectly from participation with CTMHP or receipt of CTMHP services and release CTMHP and its trustees, officers, employees, agents and representatives from any and all claims You may have in the future, waive all such claims, and agree not to sue these parties for any such claims arising out of Your participation in or with CTMHP or receipt of CTMHP services, including but not limited to claims arising out of the negligent or intentional acts or omissions of others.

7. **Release of Liability & Services.** While every reasonable effort will be made to create and deliver quality CTMHP services, CTMHP is hereby released from any claim, loss, injury, or damage arising or relating to this Agreement or the performance hereunder of CTHMP. CTMHP is also hereby released from any claim, loss, injury, or damage caused by the negligence of CTMHP.

8. **Dissatisfaction.** Due to the charity nature of CTHMP, satisfaction of CTMHP services including, but not limited, photography is not guaranteed in any manner. CTMHP is hereby released from any claim, loss, injury, or damage due to dissatisfaction by Recipient.

9. **Substitution.** In the unlikely event of unforeseen illness or any other circumstances either in control or beyond the control of CTMHP, CTHMP will use reasonable efforts to reschedule CTMHP services or find a substitute CTMHP photographer to perform the services. However, CTMHP is under no obligation to reschedule or make a substitution. CTMHP does not guarantee that a substitute photographer will have the same credentials as the scheduled photographer, and CTMHP does not guarantee a match with any particular CTMHP photographer(s).

10. **Photographer's Judgment.** CTMHP and photographer will perform all services in their sole and absolute discretion. CTMHP and photographers will not be responsible for any reason(s) which may result in a change in the performance of CTMHP's services, including but not limited: (1) Recipient or Recipient's family members running late; (2) illness of Recipient or illness of others; (3) weather; (4) Recipient or Recipient's family members stuck in traffic; (5) acts of God; (6) poor planning by Recipient; (7) lack of providing directions or shot lists to CTMHP photographer(s) and/or CTMHP.

ARTICLE FOUR. RECIPIENT RESPONSIBILITIES.

1. **Location of CTHMP Services.** As applicable, Recipient is responsible for providing a map to locations, emergency telephone numbers, and a list of any special persons, places, or objects which will participate in CTMHP services.

ARTICLE FIVE. CANCELLATION POLICIES.

1. **Delay or Cancellation due to Recipient.** If CTMHP services are delayed or cancelled due to the actions of the Recipient, rescheduling will be at the sole and absolute discretion and schedule of CTMHP and the assigned CTMHP photographer. CTMHP does not guarantee a rescheduled or re-matched session.

ARTICLE SIX. DAMAGE OR DESTRUCTION OF PHOTOGRAPHIC EQUIPMENT.

1. **Replacement, Repairs, and Destruction.** If any photographic or other equipment used by CTMHP or a CTMHP photographer during the performance of CTMHP services is damaged or destroyed by Recipient, or Recipient's invitees, guests, affiliates, friends, or family members, Recipient shall reimburse CTMHP and/or applicable CTMHP photographers for 100% of the costs to repair such damage, including insurance deductibles, or in the case of destruction, 100% of the replacement cost of such equipment.

ARTICLE SEVEN. EXCLUSIVITY AND AUTHORITY.

1. **Exclusivity.** CTMHP and an applicable CTHMP photographer(s) will be the sole and only artists (e.g. photographer(s)) performing CTMHP services during scheduled CTMHP session(s). No other photographs, films, professional services or otherwise, are permitted during these closed sessions.

ARTICLE EIGHT. PHOTOGRAPHY QUALITY AND IMAGES.

1. **Specific Image Requests.** CTMHP and a CTMHP photographer may consider input from Recipients regarding family members, friends, and scenes to be photographed. However, CTMHP or CTMHP photographer(s) do not guarantee delivery of specifically requested image(s) although reasonable efforts may be made if an appropriate amount of time is allotted to do so.

2. **Style.** CTMHP services are taken in natural light, focused on people and relationships (rather than props or clever posing). CTMHP photography services are processed in a natural, professional way with minimal color effects or vignetting.

ARTICLE NINE. CONSENT TO AND OWNERSHIP OF FOTOLANTHROPY MATERIAL (“MODEL RELEASE”)

1. **Photography; Consent and Ownership.** You (as defined above) grant to CTMHP, CTMHP contractors and/or CTMHP employees the right to photograph and video You. Such photography and video of You may be used for any lawful purpose including promoting and advertising CTMHP. You understand that CTMHP will own all rights in perpetuity, regardless of possession, to any such photographs, videos, or intellectual property taken of You or taken, created, edited or produced by You or Your organization relating in any manner to a CTMHP project. As the owner, CTMHP may copyright, publish and use such photographs or video in print and/or electronically. You agree that CTMHP may use such material with or without first and last name and for any lawful purpose. You acknowledge and agree that You will not, at any time, be compensated, in any way, and agree to waive any right to any compensation for agreeing to be photographed or videoed or agreeing to create, take, edit, or produce material. You waive any rights You may have to material taken of You by CTMHP or taken, created, produced or edited by You for CTMHP.

2. **Recipient Release.** You agree that You will sign a Video and Photography Consent (aka “Model Release”) or any document that will further effectuate this Article 9.

3. **Non-commercial use by Recipient.** Recipient may only reproduce material for personal, non-commercial use such as reproduction of copies for family and friends.

4. **Ban of commercial use by Recipient.** Recipient will not permit or assist in any commercial use or sale of material without specific consent from CTMHP and such consent may be withheld from CTMHP for any reason whatsoever.

ARTICLE TEN. IMAGES.

1. **Prints.** CTMHP may, in its sole and absolute discretion, provide prints to Recipient(s) but does not in any way guarantee that actual prints will be provided.

2. **Digital Images.** Recipient will be notified when the images become available. CTMHP will notify the respective Recipient(s) to arrange a time to share the digital images with such Recipient(s). Usually, Recipients receive images on a flash drive.

3. **Time until Delivery.** CTMHP and respective CTMHP photographer(s), as applicable, will make reasonable efforts to deliver CTMHP services (e.g. edit and submit photos) within a reasonable time. However, CTMHP and applicable CTMHP photographer(s) make no guarantees regarding time of delivery of CTMHP services.

4. **Time for Delivery in Emergency Situations.** Due to the nature of the Recipients of CTMHP, emergency situations may exist that make time of the essence for delivery of CTMHP services. In emergency situations, CTMHP and applicable CTMHP photographer(s) will make reasonable expedited attempts to deliver CTMHP services (e.g. photo images) to applicable Recipient(s). However, CTMHP and applicable CTMHP photographer(s) make no guarantees regarding time of delivery of CTHMP services.

5. **Image Amount.** Regarding CTMHP photography services, Recipient(s) should expect to receive approximately forty (40) to seventy-five (75) digital images. CTMHP does not guarantee a specific number of images delivered to the client; each session is unique.

ARTICLE THIRTEEN. MISCELLANEOUS PROVISIONS.

1. **Complete Agreement.** This Agreement is the entire agreement of the parties regarding the subject matter hereof, superseding all other agreements between them, whether oral or written, regarding the subject matter hereof.

2. **Governing Law.** This Agreement will be governed by and construed in accordance with the laws of the State of Colorado applicable to agreements made and to be entirely performed within the State of Colorado, without resort to its conflict of law provisions.

3. **Transferability.** You may not transfer Your rights under this Agreement to any third party.

4. **Time is of the Essence.** Time is of the essence with respect to the Recipient's obligations hereunder.

5. **Jurisdiction and Venue.** If any dispute arises in connection with or relating to the Agreement or relating to a claim which arises hereunder, then the parties agree that such claim shall be heard in the courts of Jefferson County, in the state Colorado, and the parties waive any defense of personal jurisdiction or lack of venue and consent to the personal jurisdiction of the Jefferson County, Colorado courts.

6. **Validity.** If any provision of this Agreement is invalid, illegal, or incapable of being enforced by any rule of law or public policy, all other provisions of this Agreement will nonetheless remain in full force and effect.