

SITE USAGE AGREEMENT
MYPHOTOGENICA.COM and
PHOTOGENICA.CONTENT-UPLOAD.COM

This Site Usage Agreement ("Agreement") referring to the myphotogenica.com and photogenica.content-upload.com ("Site") is binding for a person that creates an account ("User") and Photogenica Sp. z o.o. having its seat in Warsaw, at 16 Zbocze St. (Licensee). The Licensee also acts as the administrator of the Site and the administrator of User's personal information database ("Administrator"). By creating an account at the Site User agrees to be bound by and comply with this Agreement as well as the Photogenica Author Agreement ("Author Agreement"). If a person who intends to create an account does not wish to be bound by this Agreement, or does not accept the Author Agreement, such person may not use this Site.

1. Purpose of Registering For An Account

- A. The User creates an account in order to upload photography, graphics, film, music or other works ("Content") to the servers administered by the Licensee. Such works will be subject to the Author Agreement after having been positively verified by the Licensee. The User may also upload scans of documents ("Documents"), which refer to the Content uploaded.
- B. The purpose of the file upload to the Site is to temporary store and process Content files as well as to evaluate the Content. Files of such Content that has been accepted will be moved to other servers administered by the Licensee, files of such Content that has not been accepted will be removed. The Site is not intended to be used as back up drive or asset management system. The User is responsible for backing up his/her data and any User Content submitted to the Site, and the Administrator provides no warranty or guarantee that User Content that has been submitted will be available from the Site.
- C. There are three account access levels:
 - a. entry - with privileges to upload up to 100 content files and up to 200 document files
 - b. standard - with privileges to upload up to 5 000 content files and up to 10 000 document files
 - c. advanced - with privileges to upload unlimited number of content and document filesThe access level granted the User may be changed by the Administrator at any time.
- D. The User may use the Site free of charge. Any financial clearance between the User and the Licensee, as set forth in the Author Agreement, refer to licensing of the Content approved, and not using the Site.
- E. The User is obliged to access the Site only by using the username and password defined by the User in the registration process or supplied by the Administrator. The User is responsible for maintaining the confidentiality of the User's access information, and shall not distribute this access information or allow others to use this access information to gain access to this Site. The User agrees to notify the Administrator of any unauthorized access or need to update or remove his/her account. If the User suspects the User is being impersonated, the User shall immediately contact the Administrator.
- F. Supplying personal data is of User's own free will. Each User of the Site has the right to view his/her personal data, as well as to correct and delete it (menu "My profile"). Personal data will not be passed to third parties.
- G. In applying for an account, the User agrees to furnish true and accurate information. The information submitted in the registration process will be used to draft the Author Agreement. The User may not use a false e-mail address, impersonate any person or entity, or otherwise mislead as to the origin of Content or information uploaded or posted by the User to the Site.
- H. Submitting the registration form by the User (clicking the "Submit" button, located underneath the

registration form) constitutes the following:

- a. confirming by the User authenticity and compliance of User's personal data supplied in the registration form with the actual state
 - b. declaring that the User has been informed about the right to view and correct his/her personal data
 - c. giving by the User a consent to process his/her personal data by the Administrator for purposes regarding functioning of the Site (e.g. Content evaluation, Author Agreement conclusion), as well as for statistics and marketing purposes, in accordance with the Act on Personal Data Protection of 29 August 1997, Journal of Laws of October 29, 1997, No. 133, item 883 with later amendments).
- I. The Administrator reserves the right to disclose any information, including registration data, in order to comply with any applicable laws and/or government requests.
- J. The Administrator may remove the account at any time, in particular if:
- a. Content uploaded has been rejected and the User will not be offered to conclude the Author Agreement
 - b. the User infringes provisions of this Agreement
 - c. the User infringes intellectual property rights of third parties.

2. Upload and removal of Content

- A. The User represents and warrants that the User is the sole author of all Content uploaded to the Site and that the User's copyrights have not been restricted in a way that could challenge conclusion of the Author Agreement. If a User uploads Content created by third parties, the User represents and warrants that the User has been duly authorized by authors or copyright owners, to grant the Licensee rights as set forth in the Author Agreement.
- B. In posting any User Content to the Site, the User represents and warrants that:
- a. the User Content is original and does not infringe on or violate or misappropriate the statutory copyright or common law rights of privacy, publicity, or moral rights of any third party,
 - b. the User Content is not pornographic or obscene nor does it defame any third party,
 - c. the User Content does not contain any illegal material or promote illegal activities,
 - d. the User Content does not contain any material that denigrates or attacks any persons based on race, religion, national origin or sexual orientation,
 - e. the User Content does not contain software viruses.
- C. The User understands and accepts that uploading the Content constitutes inclusion of the uploaded Content into the Author Agreement and granting the Licensee a license to use the uploaded Content as set forth in the Author Agreement. For clarity, the User retains all of ownership rights in the User's Content.
- D. In case the User uploads Content files before the Author Agreement has been concluded, for the Content evaluation purposes, the Licensee will be only authorized to use the Content for such evaluation purposes. In case of positive evaluation, the entire uploaded Content shall be included into the Author Agreement at the moment such Author Agreement is concluded.
- E. The User may only upload certain file formats. More details about currently accepted file formats are placed in the "File upload" menu. The User may not try to upload files in formats different than currently accepted or manipulate file extensions in order to try uploading unaccepted file formats.
- F. The Administrator may remove all uploaded files at any time, in particular, Content files that have been rejected. The Administrator may retain a copy if the Content files uploaded for archival and statistics purposes.
- G. The Licensee may visibly or invisibly watermark the uploaded Content as well as use digital rights

management system technologies (DRM) to mark the Content files.

3. Posting and editing of information

- A. The User may post titles, captions, keywords, tags and other information describing the Content.
- B. In posting any information to the Site, the User represents and warrants that:
 - a. the information posted is verified, true and correct
 - b. the User provided all information that impacts the further Content licensing, in particular:
 - Model Release information
 - Property Release information
 - information as to the editorial (reportage) or non-editorial character of the Content (News content)
 - information as to whether the Content is designated to commercial, editorial or both aforementioned uses (Content audience)
 - c. the information posted does not contain any links
 - d. the information posted is not illegal, obscene, threatening, defamatory, invasive of privacy, infringing of intellectual property rights, or otherwise injurious to third parties
- C. The Licensee may edit the information posted by the User, however, as far as the editorial Content is concerned, the Licensee may not modify meanings of titles, captions, keywords and tags assigned by the User.

4. Limitation of Liability

- A. To the fullest extent permitted by applicable law, the Administrator provides the User with the Site on an "as is" and "as available" basis without any warranties of any kind. The User understands and agrees that the use of the Site is at the User's sole risk.
- B. The Administrator takes no responsibility and assumes no liability for any losses due to breaks in functioning the Site. The Administrator does not assure or guarantee a continuous access to any Content at the Site.
- C. The Administrator takes no responsibility and assumes no liability for consequences of revealing access details to third parties by the User, regardless of the reasons of revealing it.
- D. Accordingly, to the fullest extent permitted by applicable law, the User irrevocably waives and unconditionally releases and waives any and all claims, demands, damages (actual and consequential) of every kind and nature, known and unknown, the User may have or assert against the Administrator relating to or arising out of any use of the Site by the User.

5. Prohibited actions

- A. The following constitute violations of this Agreement and may result in immediate termination or suspension of your account, or in filing claims and damages by the Administrator. Following is not allowed:
 - a. deep linking or employing software or any automatic device, technology or algorithm, to "crawl," "scrape," search or monitor the Site and/or retrieve or copy Content or related information,
 - b. violating the mechanical restrictions of the Site, or bypassing other measures employed to prevent or limiting access to the Site or Content by hacking or other means,
 - c. copying any elements of the Site,

- d. probing, scanning, or testing the vulnerability of the Site or of the network supporting the Site, or seeking information on visitors to the Site or personal information of other Users of the Site,
- e. using any device, software or routine that would interfere with the proper functioning of the Site, or any transaction conducted via the Site,
- f. any use of the Site or any Content for illegal purposes, or in support of illegal activities. The Administrator reserves the right to cooperate with legal authorities and/or injured third parties in the investigation of any suspected crime or civil wrongdoing,
- g. harming, or attempt to harm, minors in any way, including, but not limited to child pornography,
- h. transmitting any material (by uploading, posting or otherwise) that threatens or encourages bodily harm or destruction of property, or that harasses another,
- i. making commercial use of the Site, including offering to sell or selling goods or services via the Site,
- j. adding, removing or modifying identifying network header information in an effort to deceive or mislead, or attempting to impersonate any person by using forged headers or other identifying information,
- k. accessing, or to attempt to access, the accounts of others, or to penetrate, or attempt to penetrate, security measures of Administrator's or another entity's computer software or hardware, electronic communications system, or telecommunications system, whether or not the intrusion results in the corruption or loss of data,
- l. transmitting any material (by uploading, posting or otherwise) that infringes any copyright, trademark, patent, trade secret or other proprietary rights of any third party, including, but not limited to, the unauthorized copying of copyrighted material, the digitization and distribution of photographs from magazines, books, or other copyrighted sources, and the unauthorized transmittal of copyrighted software,
- m. collecting, or attempt to collect, personal information about third parties without their knowledge or consent in violation of any applicable statute or ordinance,
- n. any activity that affects the ability of other people to use the Site or the Internet. This includes "denial of service" (DOS) attacks against another network host or individual user. Interference with or disruption of other network users, services or equipment is prohibited,
- o. any knowing misrepresentation or misleading statement, writing or activity made with the intent that the person receiving it will act upon it,
- p. intentional distributions of software that attempts to and/or causes damage, harassment, or annoyance to persons, data, and/or computer systems, or use of software or any device that would facilitate a continued connection, i.e. ping
- q. reselling or giving away free access to services or resources offered by the Site.

6. Restricted Access

- A. The User agrees that the User will not attempt to enter restricted areas of the Administrator's computer systems or perform functions that the User is not authorized to perform pursuant to this Agreement. The Administrator may, without notice, temporarily or permanently suspend the User's access to the

Site and the Content by deactivating the User's account or password, if the Administrator reasonably suspects that the User is using the account or password to obtain unauthorized access to the Administrator's other systems or information, or is using the account or password in any other inappropriate manner. These suspensions will be for a period of time necessary to permit the thorough investigation of such suspended activity.

- B. The Administrator may terminate this Agreement immediately, without notice, if it is determined that the User has undertaken any unauthorized activity or if any unusual activity that cannot be reasonably explained continues to occur.

7. Notification of Copyright Infringement

- A. If the User believes that his/her work has been used or copied in a way that constitutes copyright infringement and such infringement is occurring on the Site, the User should send the Administrator a notice containing:
- a description of the copyrighted work or works that the User claims have been infringed and identification of what material in such work(s) is claimed to be infringing;
 - a description of where the content that the User claims is infringing is located on the Site;
 - information sufficient to permit the Administrator to contact the persons filing the claim, such as physical address, telephone number, and email address;
 - a statement that the User has a good faith belief that the use of the content the User identified is not authorized by the copyright owner, its agent, or the law; and
 - a statement by the User that the information in the notice is accurate and, under penalty of perjury, that the User is the copyright owner or authorized to act on the copyright owner's behalf,
 - a signature of the copyright owner or person authorized to act on behalf of the copyright owner.

8. Choice of Law / Jurisdiction / Attorneys' Fees

- A. Any dispute regarding this Agreement shall be governed by the laws of Poland. The User and the Administrator agree to accept the exclusive jurisdiction of the courts located in Warsaw, Poland, regardless of conflicts of laws. This Agreement shall not be governed by the United Nations Convention on Contracts for the International Sale of Goods, the application of which is expressly disclaimed.
- B. The User and the Administrator confirm that it is their wish that this Agreement, as well as any other documents relating hereto, including notices, has been and shall be written in the English language, if the User accepted the English version of this Agreement.
- C. In any dispute between the Administrator and the User, the Administrator shall be entitled to recover its reasonable attorneys' fees, legal expert fees, and other legal expenses from the User.

9. Miscellaneous

- A. The User acknowledges that the User has read this Agreement and understands it, and agrees to be bound by all its terms and conditions. This Agreement along with the Author Agreement, constitutes the entire agreement between the User and the Administrator with respect to the subject matter hereof and merges all prior and contemporaneous communications.
- B. This Agreement shall not be modified except by a written agreement signed by duly authorized representatives of Administrator, provided that no purchase order or similar document issued by the User shall modify this Agreement, even if signed by the Administrator.
- C. If any provision of this Agreement is found invalid or unenforceable, the remainder of this Agreement shall remain valid and enforceable according to its terms. The User and the Administrator intend that

the provisions of this Agreement be enforced to the fullest extent permitted by applicable law. Accordingly, the User and the Administrator agree that if any provisions are deemed not enforceable, they shall be deemed modified to the extent necessary to make them enforceable and in such manner as comes closest to the intentions of the parties to this Agreement as is possible.

- D. This Agreement will inure to the benefit of and be binding upon the User and the Administrator, their successors and assigns, except that the User may not assign or transfer this Agreement without the Administrator's prior written consent.