

Model Release/Client Contract/Terms and Conditions/Use of Site

The parties to this release agreement are:

The models/clients who are identified at the time of registration and booking of session and/or include anyone participating in the client's photographic session, hereinafter collectively referred to as "Model(s) or Client(s)" AND

Marcelle Raphael (Hereinafter referred to as "Photographer")

Whereas the Model/Client(s) grant the Photographer permission to photograph and/or film and sound record the Models and furthermore grant permission to use the resulting work ("the Work") according to the terms stated hereunder:

1. Any permission granted to the Photographer shall extend to his/her successors, legal representatives, licensees and assigns and shall be irrevocable and perpetual without any further or additional claim for compensation by the Model.
2. Use of the Work shall be unrestricted as to location, quantity or frequency, and may be for any purpose and in any medium whatsoever, whether foreseen or unforeseen at this time, except where such use is in contravention of the law. Client has read and understands that any image may be used for sales, competitions, advertisements, marketing, peer review, internet display and/or any or all uses photographer chooses, without exclusion and without compensation to the client.
3. Permission is specifically granted for the Work to be edited, altered, distorted, used in whole or in part, in conjunction with other images, graphics, text and sound in any way whatsoever and without restrictions. Use of the Work may be in conjunction with the Models' own or fictitious names. Permission herein granted is absolute and final and shall not be subject to further inspection or approval by the Models at any stage in the use of the Work. Any image may be shared with other photographers for constructive criticism, feedback, learning or teaching.
4. The Photographer shall own all rights in the Work which shall accrue to the benefit of his/her successors, legal representatives and assigns. Copyright of all images shall forever remain with the photographer unless duly compensated for by the client at an additional fee over and above the session fee. Client maintains personal use release only. Client may choose to separately purchase release for commercial use, release for print use or right of full copyright for fees established by the photographer and paid by the client. Unless otherwise indicated by separate contract, client may ONLY use watermarked images for online purposes, unless otherwise provided for in writing.
5. By providing your digital signature or acceptance of these terms at booking and payment of the retainer, you represent that there are no restrictions on use of any image are specifically noted and you warrant that you have discussed, stated and notified any party included in the photographic session and they have read this release and that consent is provided by all pertinent parties, including consent for minors. You understand that final images are provided to you in password protected galleries. Client is responsible for ensuring the protection of the password provided and that it is possible for unauthorized use

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or display if the password is compromised. Marcelle Raphael has no responsibility to control how the client chooses distribution of password or password protected content or third party distribution resulting from client's choices to distribute password.

6. With full knowledge of the above, the Models hereby release and shall hold harmless the Photographer and his/her successors, legal representatives, licensees and assigns from all claims or damages including but not limited to defamation or violation of right of privacy or publicity, resulting from or associated with the use of the Work.

7. This Agreement shall be construed, interpreted and governed in accordance with the laws of the State of South Carolina and should any provision of this Agreement be judged by an appropriate court as invalid, it shall not affect any of the remaining provisions whatsoever. The parties agree that any or all parts of this agreement may be submitted to the other party in legible and recordable electronic form and signed with digital signatures, pen or by checking an agreement tab and upon booking through the website of Marcelle Raphael by the receiving party shall become valid parts of the agreement. All claims of any kind, torts, civil, criminal or any other suits and disputes arising under or relating to this Agreement are to be settled by binding arbitration in the State of South Carolina. The arbitration shall be conducted on a confidential basis pursuant to the Commercial Arbitration Rules of the American Arbitration Association. Any decision or award as a result of any such arbitration proceeding shall be in writing and shall provide an explanation for all conclusions of law and fact. Any assessment of costs, awards, reimbursements, refunds, expenses, and reasonable attorneys' fees or any other payments to the client/model shall have a maximum and may not exceed the amount paid by client to the photographer for any session fee. If arbitration finds against the client, the client will be responsible for any and all fees associated to and incurred by the photographer of or relating to such arbitration plus an hourly rate of \$100 for time of the photographer. Any such arbitration shall be conducted by an arbitrator experienced in photographic law and shall include a written record of the arbitration hearing. The parties reserve the right to object to any individual who shall be employed by or affiliated with a competing organization or entity. An award of arbitration may be confirmed in a court of competent jurisdiction. Client will not harass, demand, threaten, or defame photographer in any way. Client shall not use social media in any way to disparage, harass, demand, threaten or shame photographer or any services. Any complaints should be brought to the photographer for consideration and correction. Client, heirs, assigns or any third party is/are prohibited from filing any legal suit of any kind at any time. Model/Client understands that they are responsible for their safety and the safety of those parties requested to be and scheduled to be photographed. It is the responsibility of the model/client to ensure that the health of all those participating parties. Model/Client must inform the photographer of any health issues, concerns or restrictions. Model/Client indemnifies and holds harmless the photographer from any and all injury to any party during the course of the session and immediate surrounding events. Terminated or revoked print releases terminate use of images and or access to all images, but does not negate this contract. Continued use after contract termination will result in a new fee assessed for copyright and/or usage. Photographer may opt to charge up to 5x the session fee for usage of each/per image wrongfully used commercially.

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8. All Models and Parties in the images warrant having read and understood this Model Release/Client Contract Agreement and warrant being of full legal age to enter into an agreement. The Models agree that the provisions contained herein shall be binding upon the Models and their successors, legal representatives and assigns. The Models confirm their signatures or digital signatures below as being their affirmation of this Agreement. If Model is a minor or lacks capacity in the jurisdiction of residence, Parent warrants and represents that Parent is the legal guardian of Model and has the full legal capacity to consent to this release and to execute this release OF ALL RIGHTS IN MODEL'S CONTENT. Photographer has no liability for false information provided. If a minor is included in any session and both/all biological, adoptive, foster parents, guardians, legal guardians, etc. are present at the time of the session, then both/all will be entitled to use, access and print right of the images, as it applies, regardless of who signed the contract or made payment, if applicable.

9. Furthermore, you agree to periodic emails and will be enrolled to receive our newsletters and information on your images, future sessions, discounts, sales and other emails not currently specified. You may opt out by emailing me at marcelle@fineartnewborns.com. You will then be removed from the distribution list. Any non-client who orders through the website will also be enrolled in our newsletter. As always, you may opt out at any time.

10. You understand that your session fee for sessions only include my time, talent and experience, as well as use of my props, outfits, headbands, gowns, etc. Digital images may be purchased separately at your viewing session or included as package allows, if this applies. Images are usually available 3-6 weeks after your session, but are not guaranteed in this time frame. Please allow for up to 8 weeks if there are holidays. Maternity sessions include an option with additional fee for hair styling, makeup and 25-30 digital images. As a fine art photographer, photographer does not provide images straight out of the camera as portrait studios often do. Photographer reviews each image and select specific images for high end art retouching, color, density, crop and other artistic license. Edit requests must be received within seven (7) days after the gallery is posted. All original RAW files are destroyed after one week. Original artistic files are maintained and archived in your gallery indefinitely. Clients will not be able to view, see, obtain or be provided any RAW unedited images.

11. Due to the nature of the product, all sales are final. Session fees and retainers are non-refundable as they are for the time, service, equipment use and travel, etc. of the photographer. All parties warrant that they have reviewed the Fine Art Newborns website and/or other locations which maintain and display my work and that by entering into this contract they agree that the style of photography and editing is representative of the images you wish to obtain from your session. Any special notes, ideas, restrictions, etc must be noted in the comments section upon booking - AT THE TIME OF BOOKING - through my online system or before your session. All poses and/or images taken at the session may not be provided. The photographer uses discretion on image selection based on industry knowledge and experience. For example, 20 images may be taken, however fewer images may be provided based on package selected, quality of image, etc. Raw files are not provided for review and selection by the client. All review and selection is completed by the photographer.

12. Photographer provides the professional services of photography only. Fees for prints, canvases, products, etc are the client's responsibility using photographer specified third party printing labs. Photographer often donates or provides services, gifts, packages,

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services for contests, drawings, school events, conventions, church and private events. All parties in any FREE sessions will be entitled to use, access and print right of the images in which their image is included. All images are subject to use by the photographer as stated in this contract, for commercial use, advertising, etc.

13. All sessions are booked on a first come, first serve basis. There is a \$249 non-refundable retainer required to firmly book a session date. The retainer holds the date and time. If on an agreed upon payment plan, full payment is due fourteen (14) days prior to the session date. If the payment is not made in full 14 days prior to the session date, the date is released and the client will have to reschedule. This is to allow the date and time to be free for fully paid clients. If client cancels and can not reschedule within six months, the retainer is forfeit and the remainder of any paid funds will be reimbursed. In House Financing is provided as an option, without additional fees or interest. Unless otherwise agreed in writing, the booking retainer of \$299 may be paid and the remaining divided in equal amounts due thirty (30) days and sixty (60) days respectively or as advertised. This option is only available upon request. Full payment is due fourteen (14) days prior to the session date. Third Party options for financing are available through PayPal's Bill Me Later program and can be found on the investment page. Prepay Plans are also available for those who would like to book a future date and make payments prior to the session. Postpay plans are available with a 50% retainer. Images will not be provided until payment is made in full.

14. Payments are made through PayPal direct to Photographer. Client warrants and agrees that they will not seek reimbursement for any service or product, as all sales are final. Retainers are non-refundable. Sessions fees after the completion of your photography session are not refundable. All chargebacks will be subject to chargeback amount, collection and legal fees in their entirety. Chargeback amounts are pursued. If chargebacks result in any fees to the photographer, model/client is responsible to reimburse those fees incurred. Return check fees are \$35.00.

15. No part of this agreement can be shared or provided to any other photographer or photography related person, entity or provider. Copyright is strictly enforced and monitored. All Rights Reserved. Updates may occur to these terms of service with or without notice and will be fully binding.

16. This Agreement incorporates the entire understanding of the parties. Any modifications of this Agreement must be in writing and signed by both parties. Any waiver of a breach or default hereunder shall not be deemed a waiver of a subsequent breach or default of either the same provision or any other provision of this Agreement.

This is your contract. You are entering into this contract and it is legally binding upon acceptance of the terms and payment of the retainer or fees. Please print this agreement for your records.

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Photography**

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