

# Jesse Gabriel Photography

## CaRe 3D LLC

### Terms of Service



#### **JESSE GABRIEL PHOTOGRAPHY – CaRe-3D RETAINER SERVICE AGREEMENT**

This Jesse Gabriel Photography also referred to as CaRe-3D Master Services Agreement is a legal contract that governs all work performed on your behalf and sets forth the rights and obligations of both parties.

By ordering services from CaRe-3D, you agree to these terms.

Please read this Carefully.

#### **ARTICLE 1 JESSE GABRIEL PHOTOGRAPHY – CaRe-3D - DESCRIPTION OF SERVICES**

**1.1** Pursuant to the terms of this Agreement, including all of the specifications for the project that you provide through our website or directly to any member of the CaRe-3D group, we will provide the photography and scanning services you specify (collectively “Services”) to you (“Customer”); if applicable, your clients (“Homeowners”); and certain third parties as follows: At the Shoot - The photographer will make a reasonable effort to remove litter, stray objects, etc. from the rooms; however please note that this does not include things like making beds or arranging furniture. Agents are expected to have the property staging and cleaning completed prior to the 3D scan. All properties will be scanned “As Is.” After the Shoot - Delivery of 3D virtual tour: Photographer will provide a URL and embed code for the completed Matterport Space(s) (which will include access to Guided Tours and snapshots of tour if ordered). Customer understands and agrees that all Matterport Spaces (including associated Guided Tours if ordered) are hosted solely on Matterport’s platform, and Customer will not receive any digital assets for Matterport Spaces. Still Photos will be provided by email within 24-72 hours of scan. Photographer will make all of the foregoing 3D Services available to Customer within 24-72 hours after the date of the Capture Services. Customer can request that Matterport Spaces contain hidden “presented by” and “contacts” details for use on real estate MLS. Service Provider agrees to process and host the created Matterport Space(s) on the Matterport platform for a period of 12 months or until the house is sold or unless contract is cancelled between agent & home owner following the completion of Capture Services. This may be extended by customers request for an additional year for the cost of \$30.00 every 12 months. Customer acknowledges that: (a) Service Provider is an independent provider of the Capture Services and is not a contractor, employee or agent of Matterport; and (b) Service Provider is making the 3D Services available to Customer under a license between Matterport and Service Provider.

Cancellation, No-Show and Inclement Weather Policy If cancellation or re-scheduling is necessary, please do so with a minimum of 48 hours notice. Any shoot cancelled within 48 hours of a booked appointment is subject to a Cancellation Fee. Arriving late beyond 30 minutes to an appointment will be considered a cancellation, and will be billed at the full rate of the shoot. Every effort will be made to accommodate a re-scheduling. In the event of inclement weather preventing photography, a new date will be scheduled at the earliest available time.

**1.1.1** We will perform the Services you order from us through a telephone order online booking or a written work order (each a "Work Order") within the time frame we specify. Services will be performed at our then-current rates, as posted on our website and as may be updated from time to time.

**1.1.2** Once we have completed the on-site photography and/or scanning Services at the physical premises ("Premises"), we will prepare the final version for posting online and notify the Customer. The final version of the 3D virtual tour and imaging is not published until the Customer reviews it and clicks the "publish" button.

**1.1.3** We will provide you with a direct link to the posted 3D virtual tour imaging that we have produced. At your request, we will also delete the 3d virtual tour imaging from the internet, although we cannot guarantee that this will fully eliminate it, as we cannot control whether third parties have copied some or all of it after it is publicly available.

**1.1.4** We will host the final version of the 3d virtual tour for one year at no additional cost. If Customer wishes to have the 3d virtual tour hosted longer, Customer must request continued hosting prior to the one year anniversary of the 3d virtual tour being posted online and must pay our then-current hosting fees.

**1.1.5** If Customer adds additional Services, these will be memorialized with additional orders and may bear additional fees.

**1.1.6** If requested by Customer, Homeowner or a property purchaser ("Buyer"), we will host a keepsake copy of our 3D virtual tour imaging for the Premises. With regard to Buyers, we will check with Customer to verify Buyer's identity before selling this item. If Customer or a Homeowner seller later requests that we delete the 3D virtual tour from the internet, we will do so and we will provide the Buyer with a 50% discount on the fees paid by Buyer.

**1.1.7** Once the 3D scan is completed objects may not be removed from the tour without a reshoot.

**1.2** Subject to the terms of this Agreement, CaRe-3D will use commercially reasonable efforts to provide the Services and to comply with all applicable laws and regulations in fulfilling its obligations and providing Services under this Agreement and any additional orders.

## **ARTICLE 2 CUSTOMER AND HOMEOWNER OBLIGATIONS**

**2.1** In order to get the best results from CaRe-3D Services, and to protect our personnel, Homeowner privacy and safety, Customer and Homeowner(s) agree to the following: 2.1.1 Customer and/or Homeowner will have pets, especially dogs, put away or removed from the Premises for the duration of the Services.

**2.1.2** Customer and/or Homeowner will prepare the Premises by making it clean and tidy. Customer and Homeowner acknowledge that CaRe-3D personnel are not responsible for putting away or moving Homeowner's belongings, and the Premises will be captured in "as-is" condition.

**2.1.3** Customer and/or Homeowner will remove from view personally identifiable information or extremely valuable objects (such as diplomas, certificates, visible lists of passwords or phone numbers, credit cards, checkbooks, gift cards with visible barcodes or numbers, employee or personnel data, trade secret information or any other personal or confidential material).

Customer and Homeowner understand and acknowledge that CaRe-3D scans are extremely high definition and failure to remove these items could lead to identity theft, burglary, or other harm to Customer or Homeowner.

**2.1.4** Customer and/or Homeowner must give us written instructions to take the 3D tour imaging off the internet. Unless we are instructed to take down photograph or scans, we will leave them active for one year, however we have discretion to remove them if the Premises has been sold.

## **ARTICLE 3 LICENSE & INTELLECTUAL PROPERTY**

### **3.1 Ownership.**

CaRe-3D owns and retains the copyright to all of the images and any multimedia content it produces. Customer, Homeowners or appropriate third parties own the copyright to any materials at the Premises which are subject to copyright. Nothing in this Agreement constitutes a transfer of any ownership interest in any intellectual property or other proprietary rights owned by either Party, including but not limited to ownership of CaRe-3D Trademarks, copyrights, software, patents or patentable technologies, or know-how. All rights not explicitly granted shall be retained exclusively by the respective owner Party hereunder.

### **3.2 License.**

**3.2.1** During the term of this Agreement, we grant you a limited, non-exclusive, royalty-free license to use, display, republish, publish on MLS and edit the imaging that we produce and provide to you. This grants you any media created by CaRe-3D ownership to the customer in perpetuity with full authority. This license is non-transferable to any other party. Care-3D will not exercise copyright authority and demand that media be withdrawn from MLS or any other online publishing service.

**3.2.2** Subject to the terms and conditions herein, during the term of this Agreement, we grant you a limited, non-exclusive, nontransferable, royalty-free license to reproduce in printed marketing material, display on corporate web sites one or more.

**3.2.3** You must not use our Trademarks in connection with the offering or identification of any competitor's services or wares. Customer must not use any trademark or brand name other than Trademarks on or in connection with any promotion of your use of CaRe-3D products and services.

**3.2.4** CaRe-3D trademarks present on the final version of the Services we provide to you ("Trademarks") for the exclusive purposes of (1) identifying our Services using our Trademarks, and, for real estate brokerages, (2) advertising that you work with us to provide CaRe-3D Services.

**3.3** You will not, and will not authorize others to reverse compile, reverse assemble, reverse engineer or otherwise attempt to create or obtain the source code or algorithms of any CaRe-3D software or Services. You will not, and will not authorize others to, remove or modify any copyright, trademark patent or other proprietary labels of marketing from any CaRe-3D product or imaging. 3.4 The term and duration of the license & intellectual property shall never expire unless written authorization is made and agreed between all parties including MLS.

#### **ARTICLE 4 PAYMENT & CANCELLATION**

**4.1** You must pay for our services at the rates charged at the time each order is placed. Our rates and cancellation fees are listed in our fee schedule, attached or available here.

**4.2** We reserve the right to require you to pay in advance in full or to have enough prepaid CaRe-3D credit to cover the contracted Services for each project. If you cancel the Services, we have the right to charge you for all or a portion of the the Service price as follows.

**4.3** In order to cancel Services without being charged, you must provide us with written notice of cancellation no later than 48 hours prior to the scheduled on-site portion of the Services. Otherwise, our cancellation policy applies.

**4.4** If the Premises is not ready for on-site Services at the scheduled appointment time, we charge a \$15 delay fee per 15 minute delay or part thereof.

**4.5** If there are loose dogs or other animals on-site who appear to present any kind of danger to CaRe-3D personnel, CaRe-3D may cancel the Services and Customer will be responsible for a 100% charge.

**4.6** If service provider is not able to perform pre-paid services, Care-3D/ Jesse Gabriel Photography will reimburse unused, pre-paid services within 3 business days.

#### **ARTICLE 5 INDEMNITIES**

**5.1** Customer shall indemnify, defend and hold harmless CaRe-3D from any and all third party (including Homeowner) claims, damages, losses or expenses (including court costs, arbitration fees, penalties, fines, amounts paid in settlement of claims, legal fees and disbursements, and dispute resolution related costs and expenses) which CaRe-3D may incur arising out of or related to (i) theft, break-in, damage or any other type of loss incurred by Homeowner or the Premises; and (ii) Customer's breach of its obligations of confidentiality set forth herein.

**5.2** Service Provider to hold agent, broker and home owner harmless for any injury to provider or providers equipment when on premises of the job.

#### **ARTICLE 6 LIMITATION OF LIABILITY**

THE AGGREGATE LIABILITY OF JESSE GABRIEL PHOTOGRAPHY - CaRe-3D AND ITS SUPPLIERS AND LICENSORS FOR CLAIMS RELATED TO THIS AGREEMENT, WHETHER FOR BREACH OF WARRANTY, CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY OR OTHERWISE SHALL BE LIMITED TO THE FEES ACTUALLY PAID BY CUSTOMER FOR THE SERVICES GIVING RISE TO SUCH CLAIMS. IN NO EVENT WILL CaRe-3D OR ITS SUBCONTRACTORS BE LIABLE FOR ANY INDIRECT, PUNITIVE, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES IN CONNECTION WITH OR ARISING OUT OF THIS AGREEMENT (INCLUDING LOSS OF PROFITS, USE, DATA OR OTHER ECONOMIC ADVANTAGE), EVEN IF CaRe-3D HAS BEEN PREVIOUSLY ADVISED OF THE POSSIBILITY OF SUCH DAMAGE. IN NO EVENT WILL CaRe-3D OR SUPPLIERS OR LICENSORS BE LIABLE FOR THE BREAKAGE OR DAMAGE OF ANY ITEMS AT THE PREMISES, FOR ANY LOST PETS OR OTHER LOSSES RESULTING FROM CUSTOMER OR HOMEOWNER'S FAILURE TO PROPERLY PREPARE THE PREMISES FOR THE ON-SITE SERVICES, FOR ANY BURGLARY, PREMISES BREAK-IN, IDENTITY THEFT, DIGITAL THEFT OR ANY

OTHER HARM RESULTING FROM PROVISION OF THE ON-SITE SERVICES, OR FOR THE COST OF PROCUREMENT OF SUBSTITUTE GOODS, SERVICES OR TECHNOLOGY. THE FOREGOING LIMITATIONS WILL APPLY NOTWITHSTANDING THE FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY HEREIN. ARTICLE 7 WARRANTY DISCLAIMER TO THE EXTENT PERMITTED BY LAW, THE SERVICES, SOFTWARE, FINAL PRODUCT, AND ALL SUPPORT PROVIDED UNDER THIS AGREEMENT ARE PROVIDED ON AN "AS IS" BASIS EXCEPT WHERE EXPRESSLY WARRANTED IN THIS AGREEMENT OR A WORK ORDER, AND CaRe-3D AND ITS SUPPLIERS AND LICENSORS DISCLAIM ALL WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

## **ARTICLE 7 GENERAL**

**7.1 Governing Law and Venue.** This Agreement shall be governed by the law of the State of California. The Parties agree that any dispute arising out of or relating to this Agreement shall be brought before the state or federal courts in the County of Humboldt, State of California, and both Parties agree that such courts have personal jurisdiction over them.

**7.2 Assignment.** This Agreement may not be assigned or transferred (by operation of law or otherwise) by Customer without the express prior written consent of CaRe-3D, which consent shall not be unreasonably withheld. CaRe-3D may freely assign and transfer this Agreement. Any attempted assignment by Customer without the required consent of CaRe-3D shall be void. This Agreement shall inure to the benefit of each Party and its successors and permitted assigns. **8.3 Notices.** Any notices required or permitted to be given to either Party hereunder shall be deemed properly given when delivered by certified mail (return receipt requested), hand delivery, confirmed email or certified overnight delivery such as Federal Express, and directed to such Party at the address appearing in the first paragraph of this Agreement. Either Party may change its address for purposes of this Section

**7.3** Upon delivery of written notice of such change to the other Party.

**7.4 Severability.** If any provision of this Agreement is held by a court to be illegal, invalid, or unenforceable, the rest of this Agreement will be legal, valid, and enforceable to the fullest extent possible. Headings used in this Agreement are provided for convenience only, and shall not in any way affect the meaning or interpretation hereof.

**7.5 Waiver.** No waiver of any right by either Party under this Agreement shall be of any effect unless such waiver is express, in writing and signed by the waiving Party.

**7.6 Conflict Between Terms and Conditions and Work Orders.** The Parties agree that in the event of a conflict between the provisions contained in this Agreement and any concurrently or subsequently executed work order, the terms contained in this Agreement shall govern.

**7.7 Force Majeure.** Except for the obligation to pay money, neither party will be liable for any failure or delay in its performance under this Agreement due to any cause beyond its reasonable control, including acts of war or terrorism, acts of God, earthquake, flood, embargo, riot, sabotage, labor shortage or dispute, product recalls, governmental acts, provided that the affected party: (a) gives the other party prompt notice of such cause, and (b) uses its best reasonable efforts to correct promptly such failure or delay in performance. Although Customer's obligation to pay for Services provided shall not be excused, the delay or failure to pay due to Force Majeure shall be excused. The parties agree that in the event of heavy rain, CaRe-3D may postpone providing on-site Services with Customer's oral approval.

**7.8 Survival.** If this Agreement expires or is terminated, the provisions of Articles 3, 4, 5, 6, and 7 shall survive.

**7.9 Attorneys Fees.** In the event of any dispute between the Parties, the prevailing Party in any action based upon the dispute shall be entitled to its reasonable attorneys' fees and costs associated with such action.

**7.10 Amendment.** This Agreement may be amended only in writing, signed by both Parties. Any purported oral modification hereof shall be void.

**7.11 Entire Agreement.** This Agreement, including all exhibits and attachments, and all subsequently executed Work Orders which reference and incorporate this Agreement, is the entire agreement between the Parties with respect to this subject matter, and supersedes all prior and contemporaneous discussions, communications and agreements with respect thereto.

## **EXHIBIT A –**

### **Services may include:**

3D Immersive Tour

Retainer Clients Up to 2,500 Sq. Ft. Home

Package A Up to 2,000 Sq. Ft. Home

Package B Up to 2,500 Sq. Ft. Home

2-D Floor Plans (*Retainer & Pkg B Only*)

Auto Walkthrough (*Retainer & Pkg B Only*)

Slideshow Video (*Retainer & Pkg B Only*)

Multiple Interior Photos

Multiple Exterior Photos

One Year of Free Hosting (*Or until the house is sold or contract has been cancelled.*)

URL & Embed Code

Social Media Marketing Links

Free Delivery Within 35 Miles of Fortuna, Ca

Media files Delivered within 24 - 72 hours

Drone Photography

Drone Videography

Copywriting

### **\*Additional fees apply under these circumstances:**

- Travel Charges. \$0.75/mile for locations outside 35 miles radius of Eureka, CA.
- Rescheduling fee. \$150 rescheduling fee if rescheduled in less than 48 hour notice.
- Additional separate model scanning fee. (ex: Separated Garages, Granny Units and Pool Houses) \$100 per model.
- 2D floor plans. \$40 for properties over 5,000 Sq. Ft.
- Hosting fees. \$60 per interior model after the first 12 months.

### **- Retainer Clients**

Additional fees based on size of home:

- 2,500 square feet and below \$0
- 2,500 to 3,500 square feet additional \$50

- 3,500 to 4,500 square feet additional \$100
- 4,500 to 5,500 square feet additional \$150
- 5,500 to 6,500 square feet additional \$200

**- Package A Clients**

Additional fees based on size of home:

- 2,000 square feet and below \$0
- 2,000 to 3,000 square feet additional \$50
- 3,000 to 4,000 square feet additional \$100
- 4,000 to 5,000 square feet additional \$150
- 5,000 to 6,000 square feet additional \$200

**- Package B Clients**

Additional fees based on size of home:

- 2,500 square feet and below \$0
- 2,500 to 3,500 square feet additional \$50
- 3,500 to 4,500 square feet additional \$100
- 4,500 to 5,500 square feet additional \$150
- 5,500 to 6,500 square feet additional \$200
- 6,500 to 7,500 square feet additional \$250