

ALAN MURPHY

PHOTOGRAPHY

ENROLLMENT & ASSUMPTION OF RISK WAIVER AGREEMENT

NOTE: THIS AGREEMENT CONTAINS INDEMNITY AND RELEASE PROVISIONS

This Enrollment & Assumption of Risk Waiver Agreement (this “Agreement”) is made and entered into effective 12:01AM CST on the 1st day of January, 2022 (the “Effective Date”), between Alan Murphy, and Alan Murphy Avian, LLC (collectively, “Provider”), and, [REDACTED] an individual whose address is [REDACTED] (“Participant”).

WHEREAS, Provider is offering photography workshops to the general public from time to time in various locations and Participant is desiring to enroll, from time to time, in one of more of Participant’s workshops” (each a “Workshop” and collectively, the “Workshops”) during the calendar year 20[insert two digit year] (the “Period”);

NOW THEREFORE, in consideration of the execution and delivery of this Agreement, the other mutual premises and covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Participant and Provider, acting for themselves and their respective heirs, representatives, successors and assigns, hereby agree as follows:

1. Participant has been made fully aware that their presence and attendance at any of Provider’s Workshops during the Period entails a degree of risk, danger and physical exertion, including, without limitation, situations in which the Participant will may be (i) in close proximity to wild animals or (ii) required to utilize accommodations and transportation means not operated or maintained to standards common in the United States or (iii) exposed to weather conditions bordering on or including the extremes or (iv) required to transit on a vehicle, airplane, helicopter, vessel or other mode of transportation, possibly in the extreme polar regions and to transit to and from numerous landing areas via zodiac or other means (including embarking and disembarking between a vessel and the zodiac). Participant knowingly and voluntarily accepts such risks and dangers as a condition precedent to its attendance any Workshop during the Period. Each registration for a Workshop during the Period constitutes a reaffirmation, ratification and acknowledgement of this acceptance and of this Agreement.

2. PARTICIPANT WILL DEFEND, INDEMNIFY, HOLD HARMLESS, WAIVE AND FOREVER RELEASE PROVIDER GROUP FROM AND AGAINST ANY AND ALL CLAIMS, LOSSES, DAMAGES, DEMANDS, CAUSES OF ACTION, SUITS, JUDGMENTS AND LIABILITIES OF EVERY KIND, (INCLUDING ALL EXPENSES OF LITIGATION, COURT COSTS AND REASONABLE ATTORNEYS’

FEES) BROUGHT OR ASSERTED AGAINST PROVIDER GROUP BY ANY PARTY WHOMSOEVER, DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATED TO THIS AGREEMENT OR PARTICIPANT'S ATTENDANCE AT ANY WORKSHOP DURING THE PERIOD, INCLUDING, WITHOUT LIMITATION, THOSE RESULTING FROM ANY CLAIM OF LOSS, DAMAGE, INJURY, ILLNESS OR DEATH (INCLUDING WITHOUT LIMITATION, THOSE ARISING FROM, CONNECTED WITH OR RELATED TO (I) PERSONAL INJURY TO, BODILY INJURY TO, EMOTIONAL OR PSYCHOLOGICAL INJURY TO, PROPERTY OR WAGE LOSS, BENEFITS LOSS, OR ILLNESS OR DEATH OF PARTICIPANT (INCLUDING, WITHOUT LIMITATION, ALL COSTS AND EXPENSES ASSOCIATED WITH MEDICAL EVACUATION OF AND/OR EMERGENCY MEDICAL SERVICES PROVIDED TO PARTICIPANT) OR (II) DAMAGE TO OR LOSS OF ANY PROPERTY OR EQUIPMENT OF PARTICIPANT), IN EACH CASE, REGARDLESS OF WHO MAY BE AT FAULT OR OTHERWISE RESPONSIBLE OR ANY STATUTE, RULE OR THEORY OF LAW, INCLUDING BUT NOT LIMITED TO THEORIES OF STRICT LIABILITY, AND EVEN THOUGH THE SUBJECT LOSS, DAMAGE, INJURY, ILLNESS OR DEATH MAY HAVE BEEN CAUSED IN WHOLE OR IN PART BY: (I) THE SOLE, CONCURRENT, ACTIVE OR PASSIVE NEGLIGENCE OF PROVIDER GROUP OR A THIRD PARTY; (II) THE UNSEAWORTHINESS OF A VESSEL, AIRPLANE, HELICOPTER, VEHICLE OR OTHER MODE OF TRANSPORTATION CHARTERED BY OR ON BEHALF OF PROVIDER GROUP; OR (III) A DEFECT IN THE PROPERTY OR EQUIPMENT OF PROVIDER GROUP OR ANY VESSEL/AIRPLANE, HELICOPTER, VEHICLE OR OTHER MODE OF TRANSPORTATION PROVIDED BY OR ON BEHALF OF PROVIDER GROUP, INCLUDING BUT NOT LIMITED TO THOSE DEFECTS PRE-EXISTING THIS AGREEMENT. PARTICIPANT ACKNOWLEDGES AND AGREES THAT THIS PROVISION IS CONSPICUOUS.

As used in this Section 2, the term "Provider Group" shall mean: (a) Provider; (b) any of its successors and assigns; (c) general and limited partners and members of (a) and (b); (d) parents, subsidiaries and affiliates of (a), (b) and (c); (e) the members, partners, and joint venturers of (a), (b), (c) and (d) and any entities for whom it is performing services or with whom it has entered into other agreements; (f) other contractors and subcontractors of (a), (b), (c), (d) and (e); and (g) the agents, directors, officers, and employees of (a), (b), (c), (d), (e) and (f).

3. Participant represents and warrants to Provider, such representation and warranty being a material inducement to Provider agreeing to accept Participant's registration for, and attendance at any Workshop during the Period: that it (i) fully understands and assumes the risks and dangers present with its attendance at any Workshop during the Period; (ii) fully understands that emergency and elective medical facilities and services may be unavailable or ineffective; (iii) has received and fully reviewed the itinerary and workshop description provided to Participant (or made available to Participant on any of Provider Group's respective websites) for the Workshops for which it has registered and is physically capable of attending and participating in such Workshops; (iv) secured any and all insurance it deems necessary or prudent in connection with its attendance at such Workshops.

4. It is agreed that this Agreement and the Workshop descriptions and itineraries referenced in Section 3 above covers all the agreements between the Provider and Participant and that no representations or statements, verbal or written, have been made modifying, adding to, or changing the terms of this Agreement.

5. This Agreement shall apply to, inure to the benefit of and be binding upon and enforceable by and against the parties hereto and their respective successors, assigns, heirs, executors, administrators and legal representatives.

6. Provider and Participant agree that all disputes in any way relating to, arising under, connected with, or incident to this Agreement, shall be litigated, if at all, **exclusively** in the state and federal courts located in Montgomery County, Texas, and, if necessary, the corresponding appellate courts. Each party hereto waives any right to any transfer of venue or plea to the jurisdiction that might exist in the absence of this provision. This Agreement shall be governed by and construed in accordance with the laws of the State of Texas. Participant and Provider waive the right to jury trial in the event of any litigation relating to this Agreement.

7. Notwithstanding anything to the contrary contained in this Agreement, in no event shall Provider ever be liable to Participant for punitive, indirect, incidental or consequential damages resulting from, connected to or arising out of this Agreement or Participant's attendance at, or participation in, any Workshop; provided, further, that Provider's maximum liability to Participant is limited to the actual amount paid by Participant to Provider for the unique Workshop the subject of the dispute; provided further, that in the event of unavailability of any accommodation, aircraft, helicopter, vehicle, vessel or other mode of transportation connected with any Workshop, for whatsoever reason, whether prior to the commencement of any Workshop or otherwise during any Workshop, Provider Group's maximum liability to Participant shall be further capped at the respective proportion of Participant's Workshop attendance fee actually refunded to Provider by its provider. In addition to the foregoing, in the event Provider cancels any Workshop on account of an event of Force Majeure declared by any member of Provider Group or any supplier (or provider of any such supplier) with whom and member of Provider Group has contracted for accommodations, transportation or any goods or services of any type or character, Provider's maximum liability is limited to the actual amount of any portion of the attendance fee actually refunded to Provider by any of the foregoing persons. As used in this Agreement, the term "Force Majeure" means any cause, whether or not of the type listed herein and without regard as to whether it is foreseeable or unforeseeable, not reasonably within the control of a person claiming suspension and which prevents or impedes a person performance of its obligations and includes, but is not limited to, the following: (i) physical events such as acts of God, including but not limited to lightning, earthquakes, fires, explosions, tornadoes, hurricanes, floods, storm warnings, landslides or other weather events that cause disruption, breakage or damage to, or necessitate a precautionary shut-down or operation reduction of any kind or character; (ii) weather related events affecting an entire geographic region or causing evacuation thereof, such as low temperatures or high temperatures; (iii) acts of others such as strikes, lockouts or other industrial disturbances, riots, sabotage, hostilities (whether war is declared or not) insurrection or wars, invasions, acts or threats of terror or of the public enemy; action or inaction of a governmental authority (including government order or law), embargo or blockade; or (iv) epidemic,

pandemics, travel bans, shelter in place orders, national or regional emergencies, diseases or public health emergencies, sanctions, quarantine or orders of quarantine or (v) any other cause, whether of the kind specifically enumerated above or otherwise, which is not within the control of a person.

8. If any term or other provision of this Agreement is invalid, illegal, or incapable of being enforced by any rule of law or public policy, all other conditions and provisions of this Agreement shall nevertheless remain in full force and effect so long as the economic or legal substance of the transactions contemplated hereby are not affected in any adverse manner. Upon such determination that any term or other provision is invalid, illegal, or incapable of being enforced, the parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible in an acceptable manner to the end that the transactions contemplated hereby are fulfilled to the extent possible.

9. Provider Group reserves the right to decline to accept or retain any participant, attendee or other in any Workshop, regardless of whether a deposit has been accepted or the Workshop has commenced and full payment have been made, should, in the sole and absolute discretion of any member of the Provider Group, such participant, attendee or other have impeded the operation of the trip or the rights, safety, health, welfare or enjoyment of other members of the trip. Refunds of any amounts paid to Provider Group (i) prior to departure for any Workshop shall be in accordance with the published policies of the Provider Group and (ii) after the departure for any Workshop, IF ANY, shall be in the sole and absolute discretion of Provider Group, it being agreed that removal from a workshop in progress may result in complete forfeiture of any amounts previously paid. Agreement to the forgoing terms and conditions is a condition precedent to enrollment in any Workshop.

10. Participant shall exercise reasonable care and diligence to prevent, and agrees not to take or cause, any actions or conditions which would result in a conflict with Provider's best interests. Participant agrees to conduct itself with respect to Provider so as to maintain the reputation and business interests of Provider. Participant agrees for a period of two (2) years from the Effective Date, it will not directly or indirectly (or participate with or cause others to directly or indirectly) (i) become engaged in any business activities or enter into any business transactions, in each case, within a fifteen (15) mile radius of the location of the Workshop which are, directly or indirectly, related to Provider's interests without first providing notice to Provider and obtaining its written consent and (ii) either directly or indirectly, for itself or on behalf of any other person, firm, partnership, corporation, or other entity hire, solicit, contract for, attempt to solicit, or cause to be solicited, (a) the services of any current or previous provider or supplier of services, venues, facilities and (b) any present or past participant in any Workshop attended by Participant, in each case, without the prior written consent of Provider; ***PROVIDED, HOWEVER, THAT THE FOREGOING RESTRICTIONS SHALL NOT APPLY NOR IN ANY WAY PROHIBIT (IT BEING EXPRESSLY PERMITTED) PARTICIPANT (OR ANY FAMILY MEMBER OF PARTICIPANT) FROM ATTENDING THE WORKSHOP OF ANOTHER OR UTILIZING THE SERVICES OF ANY CURRENT OR PREVIOUS PROVIDER OR SUPPLIER OF SERVICES, VENUES OR FACILITIES SO LONG AS SUCH USE PERSONAL TO PARTICIPANT (OR ANY FAMILY MEMEBER AND IS NOT FOR FINANCIAL GAIN.*** Participant acknowledges and agrees that Provider, has, in reliance of

this agreement, provided Participant access to locations and location information, suppliers and guides that, in each case, took a substantial amount of time and investment to acquire, develop and refine and that such are proprietary and confidential and the trade secret of Provider. Participant agrees that Provider's agreement to allow Participant to attend any Workshop is sufficient and adequate consideration for Participant entering into this Section 9. Participant agrees in the event of any breach of this Agreement, Provider would be irreparably and immediately harmed and could not be made whole by monetary damages. Accordingly, it is agreed that, in addition to any other remedy to which it may be entitled at law or in equity, Provider shall each be entitled to injunctive or other equitable relief (without the posting of any bond or other security) to prevent breaches or threatened breaches of this Agreement and/or to compel specific performance of this Agreement, and that Participant, will not oppose the granting of such relief. Participant also agrees to reimburse Participant for all costs and expenses, including reasonable attorneys' fees, incurred by the Provider in attempting to enforce the obligations of Participant hereunder. This Section 9 shall survive the termination of this Agreement.

11. Delivery of a signed copy of this Agreement by facsimile or email transmission shall be deemed to be delivery of this Agreement for all purposes and shall be deemed an original for all purposes.

IN WITNESS WHEREOF, the Participant has caused this Enrollment & Assumption of Risk Waiver Agreement to be executed as of the date first above written.

By: _____ (signature)
Name: _____ (print name)

Emergency Contact Name: _____

Emergency Contact Phone Number: _____

_____ (initial) I understand that it is highly recommended to purchase travel / medical insurance for this trip.

RETURN THIS WAIVER TO:

Alan Murphy Avian, LLC

Email: alan@alanmurphyphotography.com