

**THIS AGREEMENT** is made by and between:

Julia Martha Handford (trading as Julia's Celebrant Agency) ABN 41 032 797 422  
of 4 Miller Road, Heathmont, VIC 3135 ("JCA")

and

The Celebrant.

**NOW IT IS AGREED** as follows:

## **1. DEFINITIONS AND INTERPRETATION**

### **1.1. Definitions**

In this Agreement unless the context otherwise requires:

**Account** means the means of access to the Service;

**Act** means the *Marriage Act 1961* (Cth);

**Alternate Celebrant** means any other celebrant who has entered into an agreement on substantially similar terms as this Agreement with JCA with respect to the Service;

**Agreement** means this agreement and includes the schedules and annexures;

**Balance** means the amount resulting from the deduction of the Fee on the one part from the Booking Fee on the other part;

**Business Day** means a day other than a Saturday, Sunday or public holiday in Melbourne, Victoria, Australia;

**Celebrant** means the Marriage Celebrant entering into this Agreement with JCA;

**Celebrant's Personal Information** means all information concerning the Celebrant provided by the Celebrant to JCA;

**Celebrant's Content** means the content and information that the Celebrant submits, posts, uploads, adds, makes, shares or otherwise causes to be made available on, the Service and whether or not said content or information is visible to any person and includes, where relevant the Celebrant's Personal Information;

**Claim** means a claim, action, proceeding, damage, loss, expense, cost or liability, immediate, future or contingent and includes a claim for compensation;

**Customer** means any person, other than the Celebrant, who accesses the Website and or the Service (whether registered

as a user of the Website and or the Service at the time or not) for the purposes of engaging, or obtaining information with respect to any future engagement of, a marriage celebrant and includes any partner, fiancé, son, daughter, son in law, daughter in law, niece, nephew, father, mother, step-father, step-mother, grandmother, grandfather, aunt, uncle, or remoter relative of that person;

**Booking Fee** means the amount \$150.00 exclusive of GST, payable by the Customer to secure the services of the Celebrant from time to time;

**Booking Fee Guarantee** means the promotional offer provided by JCA to the Customer allowing a customer to elect to change its choice of Celebrant to an Alternate Celebrant within thirty (30) days of placing the Booking Fee;

**Evidence of Registration** means a certificate signed by the Registrar of Marriage Celebrants pursuant to section 39M of the Act;

**Fee** means the remuneration payable by the Celebrant to JCA upon a request being made by the Customer to engage the Celebrant to perform a marriage, whether or not said request was made via the Service, being \$75.00 exclusive of GST for the time being and as amended from time to time;

**JCA's Membership** means the membership of JCA in the Association of Civil marriage Celebrants of Victoria Incorporated;

**JCA's Registration** means the registration of JCA as a Marriage Celebrant pursuant to the Act;

**License** means the non-exclusive worldwide, transferable and sub licensable right to use, copy, modify, distribute, publish, and process, the Celebrant's Content and Celebrant's Personal Information (but excluding information relating to the Nominated Account) without any further consent, notice and or compensation to the Celebrant or any other person;

**Marriage Celebrant** has the meaning given to that term by the Act;

**Privacy Policy** means the privacy policy maintained by JCA for the time being and from time to time which sets out how JCA will collect, use, share, and store the Celebrant's Personal Information and (where relevant) the Celebrant's Content;

**Profile** means that part Website which may contain information relating to the Celebrant from time to time;

**Registered Office** means the registered office of JCA for the time being and from time to time;

**Service** means a non-transferable license to maintain use access and operate an Account, a Profile and allow messaging and sharing of the Celebrant's Personal Information and Celebrant's Content on, the Website and for said information and content to be visible to JCA, other Celebrants, the Customer and or the world at large and for the Celebrant to view such information or content created by Other Celebrants or the Customer on the Website as JCA may in her sole discretion allow;

**Service Period** means the period starting on the date of execution of this agreement and continuing until ended in accordance with clause 7;

**User Details** means the username and password of a Celebrant to obtain access to their Account from time to time;

**Website** means [www.juliascelebrantagency.com](http://www.juliascelebrantagency.com);

## **1.2. Interpretation**

The following rules also apply in interpreting this Agreement, except where the context clearly indicates a contrary intention:

- (a) headings are for convenience only and do not affect the interpretation of this Agreement.
- (b) a word in the singular includes the plural and vice versa and a word which suggests one gender includes the other genders.
- (c) where two or more persons are named as a party to this Agreement, the representations, warranties, covenants, obligations and rights given, entered into or conferred (as the case may be), bind them jointly and each of them severally.
- (d) a reference to:
  - (i) any party to this Agreement or to any other document or arrangement includes that party's successors, substitutes, permitted assigns, executors and administrators.
  - (ii) a person includes a natural person, corporation, association or joint venture (whether incorporated or unincorporated), partnership, firm or an authority or body (whether it be any government, semi-government, municipal, statutory or other authority or body) and any executor, administrator or successor in law of the person.
  - (iii) any legislation or legislative provision includes any statutory modification or re-enactment of, or legislative provision substituted for, and any subordinate legislation issued under, the legislation or legislative provision.
  - (iv) any agreement or document is to that agreement or document (and where applicable, any of its provisions) as renewed, extended, amended, supplemented, replaced, novated, or varied from time to time.
- (e) where a word or phrase is defined any other grammatical form of that word or phrase has a corresponding meaning.
- (f) "includes" in any form is not a word of limitation.
- (g) "writing" includes all modes of representing or reproducing words, figures or symbols in a visible form and expressions referring to writing shall be construed accordingly.
- (h) any thing, including any right, obligation, or concept, includes each part of it.
- (i) any reference to time in this Agreement is a reference to time in Melbourne.

- (j) words and phrases used in the general conditions that are defined by special condition 1 have the meaning given by that special condition regardless of whether or not those words and phrases appear capitalised in the general conditions.

## **2. THE SERVICE**

### **2.1. Service for Fee**

- (a) In consideration for the JCA entering into this Agreement at the request of the Celebrant, the Celebrant agrees to pay the Fee to JCA.
- (b) Provided always that the Celebrant is not in default of his obligations under this Agreement and has not breached any warranties provided under this Agreement, JCA shall provide the Service to the Celebrant during the Service Period.

### **2.2. Execution**

- (a) This Agreement may be electronically signed by the Celebrant by clicking “I Agree”, “Yes”, “Join JCA”, or similar and or registering an Account and or accessing or using the Service.
- (b) The Celebrant acknowledges and agrees that by doing any of the acts described in sub paragraph (a) he enters into and is bound by the terms and conditions of this Agreement with JCA.
- (c) For the avoidance of doubt, the date of this Agreement is the date the Celebrant does any of the acts described in sub paragraph (a).

### **2.3. Amendments**

- (a) The Celebrant acknowledges that JCA may amend the terms of this Agreement and or the Privacy Policy from time to time in her sole discretion.
- (b) If JCA amends the terms of this Agreement and or the Privacy Policy, JCA must give notice to the Celebrant of said amendments in accordance with this Agreement.
- (c) If the Celebrant does not agree to any amendment pursuant to this clause, the Celebrant must cease to use the Service.
- (d) The Celebrant acknowledges and agrees that continued use of the Service following notice of an amendment constitutes acceptance of the Agreement and or the Privacy Policy, as amended.
- (e) Any amendments by JCA to the terms of this Agreement or the Privacy Policy will take effect from the date of the amendment save that no amendment.

### **2.4. Right to Employ staff and third parties**

The Celebrant acknowledges and permits JCA to employ other persons to provide some or all of the Service as JCA may consider appropriate at her absolute discretion.

**2.5. Skill and Care**

JCA warrants that she will use reasonable care and skill in providing the Service.

**2.6. Time for performance of Service**

The Celebrant acknowledges and agrees that time is not of the essence for:

- (a) any dates or times when the Service is due to be performed;
- (b) the length of time that any Service will take to perform; or
- (c) any date or time when any of the Service will be completed by.

**2.7. Service Availability**

The Celebrant acknowledges and agrees that:

- (a) JCA may change or discontinue the Service at any time.
- (b) JCA may limit how the Celebrant uses, connects, interacts, or otherwise acts with, the Service from time to time including but not limited to use of the Profile.
- (c) JCA may in her sole direction choose to store or not store or show or not show any of the Celebrant's Personal Information Celebrant's Information or any other content made available on the Website from time to time.
- (d) JCA is not providing the Celebrant with a storage service.
- (e) JCA has no obligation to store, maintain or provide the Celebrant with a copy of the Celebrant's Personal Information, Celebrant's Information, or any other information or content created, provided, shared, or otherwise created or made available on the Website or via the Service from time to time except as required by law.
- (f) JCA may change, suspend or end the Service at any time in her sole direction.
- (g) JCA may change and or modify the Fee, or the price charged or paid by JCA for any other thing under this Agreement in her sole discretion.

**2.8. Profile**

- (a) As part of the Service JCA may allow the Celebrant to use, create, and maintain a Profile on the Website.

- (b) The Celebrant agrees that the purpose of the Profile is to allow the Customer to make a decision as to whether or not to engage the Celebrant and, for that reason, the Profile must be actively monitored and maintained by the Celebrant.
- (c) The Celebrant acknowledges and agrees that the Profile must contain:
  - (i) the Celebrant's relevant contact details;
  - (ii) the Celebrant's marriage celebrant registration number;
  - (iii) the Celebrant's Australian Business Number;
  - (iv) the current availability of the Celebrant to perform marriages;
  - (v) a copy of the terms and conditions applicable to the services offered by the Celebrant.
  - (vi) a list of the fees and charges to be paid by the Customer to the Celebrant in relation to the services provided by that Celebrant including :
    - (A) the Booking Fee;
    - (B) the Administration Fee;
    - (C) Government Fees
    - (D) Rehearsal Fees;
    - (E) Travel Fees; and
    - (F) Any other fee.
  - (vii) a statement that:
    - (A) the Booking Fee is non-refundable and confirms the ceremony time with the Celebrant and secures the Customer's eligibility for the Julia's Celebrant Agency Celebrant Guarantee' ("JCACG").
    - (B) the effect of the JCACG is that if, for any reason, in the period four (4) weeks prior to the wedding the Celebrant is unable to perform the wedding, another celebrant listed on the Website will be available to perform the wedding at no additional cost to the Customer.
    - (C) the Booking Fee will be applied towards the total fees and charges payable by the Customer to the Celebrant for the performance of any service by the Celebrant for that Customer.

- (D) the 'Booking Fee Guarantee' applies and that the effect of the 'Booking Fee Guarantee' is that the Customer can, if he so desires, and without penalty, choose an Alternate Celebrant within thirty (30) days of placing the Booking Fee, and that the Booking Fee will be applied towards the fees payable for the services provided to the Customer by that celebrant.
  
- (d) JCA will use her best endeavors to ensure that the Profile allows the Customer to:
  - (i) contact the Celebrant; and
  - (ii) engage the Celebrant to perform a marriage on an available date ("**Request**").
  
- (e) The Celebrant warrants that he/she will:
  - (i) regularly monitor and update their Profile.
  - (ii) use their best endeavors to ensure that their availability is accurate.
  - (iii) respond to all Customer enquiries in a timely fashion.
  
- (f) The Celebrant acknowledges and agrees that:
  - (i) where the availability of the Celebrant on the Celebrant's Profile identifies that the Celebrant is available to perform a wedding on a certain date or at a certain time, the Celebrant is so available;
  - (ii) the Customer may rely on the Celebrant's indicated availability in making a Request and paying the Booking Fee; and
  - (iii) without limiting any other indemnity given by the Celebrant to JCA under this Agreement, to the extent that JCA may be liable to the Customer with respect to the matters described in sub paragraph (ii), the Celebrant indemnifies JCA against all Claims and costs (including legal costs on a full indemnity basis) that may be brought against JCA in relation to the same.
  
- (g) The parties agree that clauses 2.8(d) and (e) constitutes an essential term of this Agreement.

## 2.9. Other content

The Celebrant acknowledges and agrees that:

- (a) information and content other than the Celebrant's Personal Information and Celebrant's Content may be submitted, posted, uploaded, added, made, shared or otherwise caused to be made available on, the Service including information and content of other Celebrants, Customers, and the third parties ("**other content**");
  
- (b) the other content may be inaccurate, incomplete, delayed, misleading, illegal, offensive or otherwise

harmful;

- (c) JCA does not review the other content;
- (d) JCA is not responsible for the other content;
- (e) the other content may include a link to another website or request the Celebrant to provide information to a person other than JCA; and
- (f) if the Celebrant uses, views, shares, or otherwise acts upon the other content he does so at his own risk and to the maximum extent allowed by the law and equity JCA is not liable for any claim, action, proceeding, damage, loss, expense, cost or liability whether immediate, future or contingent arising from the same.

## **2.10. Booking Fee Guarantee**

The Celebrant acknowledges and accepts that if the Customer elects to use the Booking Fee Guarantee, the Celebrant will have no entitlement to the Booking Fee and will not be charged the Fee and must not make or cause to be made any claim, action or proceeding for any damage, loss, expense, cost or liability, whether immediate, future or contingent and including a claim for compensation by reason of any matter, thing or liability arising from said election.

## **2.11. Payment of Fee**

Upon a Request being made via the Service, the Celebrant irrevocably consents and authorises JCA to:

- (a) receive the Booking Fee from the Customer on the Celebrant's behalf;
- (b) deduct the Fee from the Booking Fee; and
- (c) if the Booking Fee Guarantee was not utilised by the Customer, pay the Balance, less any applicable taxes to the Celebrant's Nominated Account within thirty (30) Business Days of receipt of the Booking Fee; or
- (d) if the Booking Fee Guarantee was utilised by the Customer, pay the Balance, less any applicable taxes to the Alternate Celebrant's Nominated Account within thirty (30) Business Days of the date the Booking Fee Guarantee was utilised by the Customer;

The parties agree that this clause 2.11 constitutes an essential term of this Agreement.

## **2.12. Anti-Avoidance**

Notwithstanding that a Customer does not engage the Celebrant via the Service, the Celebrant acknowledges that he is liable to pay the Fee to JCA for any person who engages the Celebrant to perform the services of a Marriage Celebrant and who, at or prior to the time that engagement takes place, is or was a Customer, and that the liability to pay the Fee becomes due and payable as a debt owing to JCA which is immediately recoverable upon said engagement whether or not a marriage has been performed in respect of said Customer. The Celebrant acknowledges that a sworn statement of JCA or an authorised representative of JCA that a

person is or was a Customer at a particular time is sufficient evidence of that fact absent manifest error and agrees that this clause is an essential term of this Agreement.

### 2.13. No further service

The Celebrant acknowledges and accepts that:

- (a) save for the Booking Fee, JCA will not collect any other payment from the Customer on behalf of the Celebrant.
- (b) it is not JCA's obligation to recover on behalf of the Celebrant's any monies owing to the Celebrant by the Customer.
- (c) the full amount of the Booking Fee must be applied to the credit of the Customer vis a vis the Celebrant, regardless as to the value of the Balance received by the Celebrant from JCA pursuant to this Agreement.

### 2.14. No contract

The Celebrant warrants that:

- (a) the Celebrant's availability on the Profile is an offer to the Customer to perform a service in accordance with the terms and conditions it displays on its Profile ("**Celebrant's Offer**").
- (b) a Request by the Customer constitutes an acceptance of the Celebrant's Offer and formation of a contract for services between the Celebrant and the Customer ("**Contract**").
- (c) JCA is not a party to the Contract.
- (d) the Fee is a distinct and separate amount payable by the Celebrant pursuant to this Agreement to JCA in consideration for facilitating the formation of the Contract via the Service.
- (e) without limiting any other indemnity given by the Celebrant to JCA under this Agreement, the Celebrant indemnifies JCA against all Claims and costs (including legal costs on a full indemnity basis) that may be brought against JCA by any person or which JCA may pay, sustain or incur as a direct or indirect result of JCA being found by a court, tribunal, or other competent body, to be a party to the Contract.

### 2.15. Emergency Celebrant Program

- (a) The Celebrant may elect to participate in an emergency celebrant program ("**Emergency Celebrant Program**") by indicating the same when entering into this Agreement by clicking "I Agree", "Yes", "Join Emergency Celebrant Program", or similar or at such later time by notice to JCA.
- (b) If the Celebrant has elected to participate in the Emergency Celebrant Program, JCA may (but is not required to) send to the Celebrant from time to time by email or sms message (or such other means as necessary) a request for the Celebrant to indicate his availability to perform a marriage at a certain time, date, and location ("**Emergency Request**").

- (c) If the Celebrant responds to the Emergency Request, the Celebrant agrees that he is able to perform the wedding at the time, date, and location stated in the Emergency Request (or such other time on that same date as indicated in the response) and offers to perform the wedding for the sum of \$250.00 (or such other amount described in the Emergency Request), said sum being inclusive of any GST (“**Emergency Fee**”) and pursuant to his obligations under the Act (“**Offer to Perform**”).
- (d) JCA may, in her sole discretion, accept or decline the Offer to Perform.
- (e) If JCA accepts the Offer to Perform, upon performance of the wedding pursuant to the terms of the request (where relevant, as amended by the offer) JCA will pay the Celebrant the Emergency Fee.

### **3. CELEBRANT’S OBLIGATIONS**

#### **3.1. Celebrant’s Personal Information**

- (a) The Celebrant agrees to provide JCA with his:
  - (i) full name;
  - (ii) business address (or if no business address, the residential address);
  - (iii) email address;
  - (iv) telephone number;
  - (v) mobile telephone number;
  - (vi) facsimile number;
  - (vii) marriage celebrant registration number;
  - (viii) Evidence of Registration to JCA within seven (7) days of entry into this Agreement;
  - (ix) nominated bank account details for electronic funds transfer of the Balance of the Booking Fee (if any), including account name, BSB, and account number (“**Nominated Account**”);
  - (x) any such further information that JCA may reasonably require from time to time.
- (b) The Celebrant acknowledges and agrees that it is an express condition of this Agreement that:
  - (i) Celebrant’s Personal Information and the Celebrant’s Content is true and correct in every particular.
  - (ii) the Celebrant’s Personal Information and Celebrant’s Content is his own and no others.

- (iii) the Celebrant's Content does not violate the law or the rights of any other person.
- (iv) the Celebrant uses the Service in a professional manner.
- (v) the Celebrant complies with all applicable laws including any rule, regulation, proclamation, ordinance or by-law (whether present or future).
- (vi) the Celebrant's Personal Information and Celebrant's may be divulged or allowed to be divulged by JCA to third parties in relation to but not otherwise limited to the provision of the Services in accordance with this Agreement and the Privacy Policy.

### **3.2. Duty to disclose and maintain**

- (a) Upon the occurrence of any event which would result in the Celebrant's Personal Information being other than true and correct in every particular, the Celebrant must immediately provide JCA with such information so as to ensure that the Celebrant's Personal Information is true and correct in every particular. In this clause, time is of the essence.
- (b) Upon the occurrence of any event which would result in the Celebrant's Content being other than true and correct in every particular, the Celebrant must immediately amend, modify, delete, or otherwise correct such information so as to ensure that the Celebrant's Content is true and correct in every particular. In this clause, time is of the essence.

### **3.3. Compliance with the Marriage Act**

- (a) The Celebrant warrants that he is a Marriage Celebrant and is not aware of any suspension or other restriction that may prohibit or otherwise limit or restraint his ability to solemnise marriages at any place in Australia.
- (b) The Celebrant acknowledges and agrees that JCA may at any time during the Service Period require the Celebrant to provide the Evidence of Registration.
- (c) The Celebrant acknowledges and agrees that it is an express condition of this Agreement that:
  - (i) the Celebrant is and remains a Marriage Celebrant.
  - (ii) upon the occurrence of any event which would result in the Celebrant no longer being a Marriage Celebrant including the cancellation suspension revocation annulment lapse withdrawal cessation or otherwise of the registration, the Celebrant must immediately notify JCA of the same. In this clause, time is of the essence.

### **3.4. Celebrant's Acknowledgements**

The Celebrant acknowledges and agrees that it is an express condition of this Agreement that:

- (a) the Celebrant complies with the Privacy Policy.

- (b) the Booking Fee is nonrefundable to the Customer.
- (c) the Fee is nonrefundable to the Celebrant or any other person.
- (d) the Celebrant keeps its User Details secret.
- (e) JCA is authorised to store any information relating to, bill, invoice, and apply payments to, the Nominated Account for any moneys due and payable under this Agreement by the Celebrant to JCA or JCA to the Celebrant.
- (f) JCA is authorised to deduct from the Booking Fee the Fee and any fees or taxes as required by law or any other amounts owing by the Celebrant to JCA from time to time.
- (g) the Celebrant must not:
  - (i) use the Service in a dishonest, unprofessional, unlawful, abusive, discriminatory, or otherwise objectionable manner including attempting to access or use the Account of another or adding content that is not intended for a designated field.
  - (ii) do any act or thing, or attempt to do any act or thing, that is or could be construed to be, in relation to the use of the Service harassment, abuse, harm, spam, interference with, subversion of, spreading of a virus, worm, malware or undesirable computer software or code, manipulation of data, disguising the origin of any data or communication and or the reproduction, use, removal, covering, collection, sharing, disclosure, modifying or obscuring of information, content or data of another person for any purpose save as expressly provided by this Agreement or otherwise expressly authorised by that person and JCA.
  - (iii) copy, modify or create derivative works of the Services or the Website.
  - (iv) represent that the Celebrant is a partner, employee or agent of JCA.

### **3.5. Ownership of Information**

- (a) The Celebrant acknowledges and agrees that:
  - (i) as between the Celebrant and others, the Account and the Celebrant's Content belongs to the Celebrant.
  - (ii) as between the Celebrant and JCA:
    - (A) the Account belongs to JCA;
    - (B) the Celebrant's Content belongs to the Celebrant; and
    - (C) the Celebrant grants the License to JCA.

- (iii) subject to sub paragraph (i) and (ii), all trademarks, copyright, designs, and other intellectual property relating to the Website and the Service belong to JCA;
- (b) The Celebrant acknowledges and agrees that:
- (i) JCA may access, copy or store the Celebrant's Personal Information and Celebrant's Content in accordance with the Privacy Policy.
  - (ii) JCA may display advertisements near the Celebrant's Content.
  - (iii) notwithstanding any provision to the contrary in this Agreement, JCA may remove any of the Celebrant's Content that JCA is required to remove by law.
  - (iv) JCA may display the Celebrant's Content anywhere on the Website, the World Wide Web, printed materials and or other manner whether electronic, printed, or otherwise.
  - (v) other Celebrants, Customers, and or the public, may access and share the Celebrant's Content.
  - (vi) provided always that the meaning of the expression remains unchanged, JCA may edit or make formatting changes to the Celebrant's Content.
  - (vii) JCA may use, share, display or otherwise deal with any suggestions or feedback given, made or created by the Celebrant relating to the Service whether provided directly to JCA or not, and the Celebrant agrees that JCA may use, share or otherwise deal with that suggestion or feedback for any purpose and without any remuneration, compensation or other payment being given to the Celebrant in relation to the same.

### **3.6. Further acknowledgements**

The Celebrant acknowledges and agrees that:

- (a) any rights obligations responsibilities duties or otherwise arising relating deriving devolving created inferred construed or implied from of JCA's Membership or JCA's Registration does not and will not relate apply or otherwise affect or attach or be construed to relate or apply or otherwise affect or attach to the provision of the Service and that it is not a condition of this Agreement that JCA holds or continues to hold said membership or registration and the Celebrant expressly warrants that he did not enter into this Agreement in reliance on JCA's Membership or JCA's Registration.
- (b) prior to entering into this Agreement, the Celebrant received a copy of this Agreement and a copy of the Privacy Policy.
- (c) JCA provides no warranty that any result or objective can or will be achieved or attained at all, in relation to the Service.
- (d) it has had sufficient opportunity to carry out all investigations and to make all enquires in relation to the Agreement and the subject matter thereof that a prudent and careful person would make before signing this Agreement.

- (e) enters into this Agreement entirely in reliance on its own enquires and judgement.
- (f) no information, representation or warranty of any nature provided or made by or on behalf of JCA, was provided or made with the intention or knowledge that it would be relied upon by the Celebrant and no such information, representation or warranty has in fact been relied upon by the Celebrant.
- (g) to the maximum extent permissible by law and equity, JCA is not liable to the Celebrant as a result of or in connection with any information, representation or warranty of any nature provided or made by or on behalf of JCA.
- (h) to the extent allowed by law and equity, the Celebrant may not make any claim or bring any action or proceeding alleging damage, loss, expense, cost or liability, whether immediate, future or contingent and including a claim for compensation by reason of any matter, thing or liability arising from:
  - (i) any actual or alleged representation or warranty by JCA; and
  - (ii) any actual or alleged agreement or understanding not embodied in this Agreement;

in relation to anything concerning the Agreement or the subject matter of the same.

### **3.7. Essential Term**

The parties agree that this clause 3 constitutes an essential term of this Agreement.

## **4. CONFIDENTIALITY**

Except where disclosure is required by an order of the court or in order to comply with the requirements of any statutory or other competent authority, the Celebrant agrees not at any time during or after the Service Period to divulge or allow to be divulged any of the information contained in or arising out of the subject matter of this Agreement including the provision of the Services to any person except to persons authorised in writing by JCA or use any of said information for any purpose except for the proper performance of the Celebrant's obligations in accordance with the terms of this Agreement

## **5. LIMITATION OF LIABILITY**

If JCA provides the Service negligently or materially in breach of this Agreement, then if requested by the Celebrant, JCA may choose to either re-perform the relevant part of the Service or refund any Fee which was payable in respect thereof in her absolute discretion. The Celebrant's request must be made within two (2) months of the date on which JCA completes performing the relevant Service or after termination of this Agreement, whichever is earlier. The Client acknowledges that the extent of JCA's liability in relation to the same is to the fullest extent permitted by law limited to the remedies afforded to him by this clause.

## **6. INDEMNITY**

The Celebrant indemnifies JCA against all Claims and costs (including legal costs on a full indemnity basis) that may be brought against JCA or which JCA may pay, sustain or incur as a direct or indirect result of any one or more of the following:

- (a) breach or non-performance of this Agreement by the Celebrant; or
- (b) breach of warranty under this Agreement by the Celebrant,

and without limiting the generality of the foregoing, includes:

- (c) any negligence or wilful misconduct on the part of the Celebrant; or
- (d) by reason of or arising out of any information supplied to the Celebrant by JCA, its employees and third parties, or supplied to JCA by the Celebrant, within or without the scope of this Agreement.

## **7. TERMINATION**

**7.1.** This Agreement is immediately terminated without any requirement for notice:

- (a) if a Celebrant fails to provide the Evidence of Registration within seven (7) Business Days of a request made pursuant to clause 3.1(a)(viii).
- (b) if at any time:
  - (i) the Celebrant's ceases to be a Marriage Celebrant.
  - (ii) the Celebrant's registration as a Marriage Celebrant is suspended or otherwise limited or restricted.
  - (iii) JCA becomes aware that the Celebrant is accepting Booking Fees outside the Service.

**7.2.** Notwithstanding anything in this Agreement to the contrary, either Party may elect to terminate this Agreement by notice to the other, whether as a result of a breach of any term condition or warranty contained in this Agreement or not.

**7.3.** On termination of this Agreement,

- (a) all monies payable to JCA by the Celebrant under this Agreement shall immediately become due and payable and the Celebrant irrevocably consents to JCA applying any monies held on account for the Celebrant as at the date of termination towards payment of this debt.
- (b) the Celebrant will lose the right to access or use the Service.

**7.4.** The ending of this Agreement shall be without prejudice to any rights which may have already accrued to either party under this Agreement.

## **8. GENERAL**

### **8.1. Assignment**

This Agreement and all rights under it may be assigned, transferred, charged, or otherwise dealt with by JCA.

The Celebrant shall not assign, transfer, charge or otherwise deal with this Agreement except with the prior written consent of JCA.

### **8.2. Governing Law and Jurisdiction**

This Agreement shall be construed to take effect in accordance with the laws of the State of Victoria and the rights liabilities and obligations of the parties shall be governed by the laws of the State of Victoria. The parties each submit to the non-exclusive jurisdiction of the courts of the State of Victoria in respect of any dispute in arising in connection with this Agreement.

### **8.3. Severance**

If at any time any part of this Agreement is or becomes unenforceable, invalid, illegal, void or voidable in any respect and for any reason then where it is possible to read down that part so as to make it valid and enforceable, it must be read down to the minimum extent necessary to achieve that result and in any other case, that provision must be severed from this Agreement and the remaining parts will operate as if the severed provision had not been included in this Agreement.

### **8.4. Precedence**

Where there is a conflict between the provisions of this Agreement and the provisions of the Privacy Agreement, then except in the case of manifest error the provisions of this Agreement shall prevail to the extent of any inconsistency.

### **8.5. Force majeure**

Neither party shall have any liability under or be deemed to be in breach of this Agreement for any delays or failures in performance of this Agreement which result from circumstances beyond the reasonable control of that party. The party affected by such circumstances shall promptly notify the other party in writing when such circumstances cause a delay or failure in performance and when they cease to do so.

### **8.6. Entire agreement**

This Agreement contains the entire agreement between the parties and supersedes any other communications, negotiations, arrangements and agreements between the parties, whether oral or in writing, in connection with the subject matter of this Agreement. Each party acknowledges that, except as expressly stated in this Agreement, that party has not relied on any information, statement, representation, warranty or undertaking of any kind made by or on behalf of the other party in relation to the subject matter of this Agreement.

### **8.7. No Agency, partnership etc**

This Agreement shall not constitute or imply any partnership, joint venture, agency, fiduciary relationship or other relationship between the parties other than the contractual relationship expressly provided for in this Agreement. Neither party shall have, nor represent that it has, any authority to make any commitments on the other party's behalf.

#### **8.8. Obligations and benefits of Agreement**

The obligations imposed and the benefits conferred under this Agreement on each of the parties are binding upon and enure for the benefit of the respective parties and each of their respective successors in title, legal personal representatives and permitted assigns.

#### **8.9. Contra proferentum**

No rule of construction shall apply to construe this Agreement, or any provision or part thereof, to the disadvantage of a party merely because that party was responsible for the preparation of this Agreement or the inclusion in this Agreement of said provision or part.

#### **8.10. Co-operation**

Each party must do or procure to be done by its employee or agent anything (including execute and deliver any document) necessary, desirable or reasonable to give effect to this Agreement and to the transactions contemplated by it within a reasonable time of being requested to do so by the other party and, unless this Agreement states otherwise, at that party's own expense.

#### **8.11. No right of set off**

Unless this Agreement expressly states otherwise, a party has no right of set-off against a payment due to another party.

#### **8.12. Waiver**

- (a) A party does not waive a right simply because it:
  - (i) fails to exercise the right;
  - (ii) delays exercising the right; or
  - (iii) only exercises a part of the right.
- (b) Notwithstanding sub paragraph (a), a right may only be waived in writing signed by the party giving the waiver.
- (c) A single exercise of a right does not prevent a further exercise of it or the exercise of any other right.
- (d) A waiver by a party of any breach or a failure to enforce or to insist upon the observance of a provision of this Agreement will not operate as a waiver of any other or of any subsequent breach.

#### **8.13. Notices and Service**

- (a) In addition to any manner of service authorised by the Law in the State of Victoria, a notice or other

communication to or by a party to this Agreement is sufficient and effective if:

- (i) where it is a notice or communication from JCA to the Celebrant:
  - (A) it is addressed to the Celebrant an address the Celebrant has provided to JCA;
  - (B) a banner or other notice is displayed on the Website; or
  - (C) it is sent to the Celebrant by telephone, mail, email, or sms message.
- (ii) where it is a notice or communication from the Celebrant to JCA:
  - (A) it is addressed to JCA at her Registered Office;
  - (B) it is address to JCA at an address JCA has provided the Celebrant;
  - (C) it is sent to JCA by email addressed to [hello@jcacelebrants.com](mailto:hello@jcacelebrants.com)
- (b) a notice or communication will be considered received from a party:
  - (i) if delivered in person, when delivered to the addressee;
  - (ii) if posted, two (2) Business Days after posting (if posted within Australia to an address in Australia) or seven (7) Business Days after posting (if posted to or from a place outside Australia);
  - (iii) if sent by email, when the email is sent,
  - (iv) if sent by banner or other notice displayed on the Website, when the Website displaying said banner or notice is accessed by the Celebrant;
  - (v) if sent by fax, when the transmitting machine produces a written report that the notice has been sent in full; and

save that:

- (vi) if a notice is delivered or received by fax on a day that is not a Business Day or after five (5) pm on a Business Day, the notice will be considered delivered or received on the next Business Day; and
- (vii) in the case of a notice sent by facsimile transmission, where the addressee within twenty-four (24) hours of transmission notifies the sender that the transmission was not wholly received in legible form, service by facsimile is effective where a retransmission is sent in conformity with this clause, and no such notice is given by the receiver.