



DEED OF AGREEMENT FOR SERVICES

BETWEEN: Manuel Vicente Photography [28652534261] ("MVP")

AND: **The Client**

(Individually referred to as "Party" or collectively referred to as "Parties" or "the Parties")

RECITALS

- A. MVP is a professional photographer and has significant experience in all aspects of photography.
- B. The Client wishes to utilise MVP's expertise for consideration.
- C. The Parties have agreed that the Client will engage MVP to perform specific services for the benefit of the Project, as set out in the terms of this Deed.

IT IS AGREED

1. Interpretation and Definitions
 - a. In this Deed, unless the context requires otherwise, the following shall apply:
 - i. References to this or any other document include the document as varied or amended, and notwithstanding any change in the identity of the Parties.
 - ii. References to this agreement include its schedules and annexures (if any).
 - iii. A reference to a gender shall include a reference to all other genders, and the singular will include the plural and vice versa.
 - iv. A reference to a statute, ordinance, code, or other law includes regulations and other statutory instruments under it and consolidations, amendments, re-enactments or replacements of any of them (whether of the same or any other legislative authority having jurisdiction), and any equivalent of any other legislative authority having jurisdiction that may be relevant to the subject matter of this Deed.
 - v. Headings are for convenience only and shall not be taken into account in interpreting the provisions of this Deed.
 - vi. A reference to a clause, part, schedule or attachment is a reference to a clause, part, schedule or attachment of or to this Deed.
 - vii. An expression importing a natural person includes any assignee, trust, partnership, joint venture, association, body corporate or governmental agency.
 - viii. Reference to an amount of money is a reference to the amount in the lawful currency of the Commonwealth of Australia.
 - ix. Reference to a Party will include a reference to that Party's successors, heirs or assignees permitted by law.
 - x. An obligation of 2 or more Parties binds them jointly and separately and an obligation incurred in favour of 2 or more Parties is enforceable by them jointly and separately.
 - xi. Where a word or phrase is given a particular meaning, other parts of speech and grammatical forms of that word or phrase have corresponding meanings.
 - b. In this Deed, unless the context requires otherwise, the following words mean:
 - i. "*Claims*" means any claims including any action claim, suit, cause of action, arbitration, money, debt, costs, demands, verdicts and judgments either at law or in equity or arising under the provisions of any statute, including but not limited to those creating Taxation liabilities.
 - ii. "*The Client*" means the signatory to this Deed (not being MVP) as set out at Item 1 of the Schedule.
 - iii. "*GST*" means Goods and Services Tax, as defined in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).
 - iv. "*The Products*" means any photographic or other material, designs, drawings, dictums and so forth created by MVP during the course of the Project and for the purpose of the Project.

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iii. "*The Project*" means the specific photography services for which MVP is engaged by the Client to provide, as set out in the provisions of this Deed and the Schedule.

2. Purpose and Agreement

The purpose of this Deed is to set out and formalise the services MVP will provide to the Client, and specifically to define the extent of the terms and conditions surrounding the said services, which the Parties have agreed to be essential, including the:

- a. Current and future proprietary or other rights in or in relation to the Products;
- b. Nature and extent of services to be provided by MVP to the Client;
- c. Consideration payable by the Client to MVP in exchange for services provided to the Client, and the reimbursement of MVP for any expenses reasonably incurred in providing services to the Client; and
- d. Allocation of various liabilities or potential liabilities and corresponding indemnities.

3. Warranties

- a. Before entering into this Deed, all Parties have obtained, or have had the opportunity and have elected not to so obtain, separate and independent legal, accounting and financial advice as to the terms of this Deed and as to their obligations, rights and liabilities under this Deed. Each Party relies on this warranty and representation given by each other Party.
- b. All Parties intend for this Deed to be binding.
- c. All Parties understand that this Deed continues to operate despite the death of a Party and operates in favour of, and is binding on, the legal personal representative of that Party.
- d. The Parties have entered this Deed with the intention that it will still apply with a binding effect to the fullest extent possible notwithstanding any material change in the circumstances of any Party.
- e. No Party has entered this Deed as the result of any undue influence, unconscionable conduct, duress or similar circumstances of pressure, necessity or unequal bargaining power and all Parties were fully cognisant of the advantages and disadvantages of so entering at the time of making an informed choice in the affirmative.
- f. The Parties will do all things reasonably necessary, including but not limited to the execution and lodgement of any requisite documents, to give effect to the provisions of this Deed.
- g. The Parties will refrain from doing anything, including but not limited to the execution of a last will and testament with inconsistent provisions to this Deed, that may potentially jeopardise the operation or effect of any of the provisions of this Deed, and the Parties acknowledge and agree that any such act will be void or voidable at the discretion of the Parties.

4. Obligations of MVP

Throughout the course of the Project, and in consideration for the obligations of the Client, MVP will:

- a. Use all reasonable endeavours to maintain and keep current the highest standards with respect to photography, printing and reproduction;
- b. Use all reasonable endeavours to ensure that the standards with respect to printing reproduction and any other services provided for the purpose of the Project from third parties are as close as possible to those requested by the Client;
- c. Use all reasonable endeavours to continue to conduct the Project in accordance with the Schedule;
- d. Maintain confidentiality with respect to all personal details or proprietary or sensitive information of the Client; and
- e. Deliver the Products to the Client upon the Client's compliance in full with the payment of consideration to MVP for the Project pursuant to clause 5 herein, as the case may be.

5. Consideration

In consideration for the obligations of MVP, the Client:

- a. Will pay MVP an initial non-refundable deposit, as set out in Item 8 of the Schedule, on account of the Agreed Price of the Project;

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- b. In the event that the Products are complete within seven days of Item 7 of the Schedule, will pay MVP the balance of the Agreed Price of the Project immediately on notification to the Client by MVP of completion of the Project;
 - c. In the event that the Products are not complete within seven days of Item 7 of the Schedule, will pay MVP the balance of the Agreed Price of the Project within fourteen days of such notification to the Client by MVP of completion of the Project;
 - d. In the event that the Client does not comply with clause 5b or 5c herein, interest will immediately begin to accrue from the 15th day following such notification of completion of the Project at the rate awarded in accordance with section 100 of the *Civil Procedure Act 2005* (NSW);
 - e. May pay MVP by way of instalments at the sole discretion of MVP and on terms to be determined by MVP and agreed in writing with the Client;
 - f. While the consideration payable by the Client to MVP pursuant to this clause is inclusive of the disbursements and other costs associated with the fulfilment of MVP's obligations pursuant to clause 4 herein, with respect to any additional services and / or products provided by MVP pursuant to clause 4 herein, the Client will pay MVP additional consideration in the form of the cost price of the said services and / or products plus a margin of 10% plus GST.
6. Use of and Rights in the Products
- a. Any and all proprietary rights to and in the Products, including but not limited to copyright and any moral rights, remain exclusively vested in MVP at all times.
 - b. Subject to the Client's compliance with the provisions of this Deed, MVP grants the Client a non-exclusive and irrevocable license in and to the Products, subject to the following terms:
 - i. MVP retains the right to print and otherwise reproduce the products for both internal and external purposes, including but not limited to marketing, promotion, exhibition and advertising; and
 - ii. The Client may not use the Products for any commercial, or non-commercial but public, purpose.
7. Termination
- a. Without limiting the rights contained elsewhere in this Deed, either Party may terminate this Deed by giving the other Party two weeks' written notice of termination in any of the following circumstances:
 - i. Where the Parties agree in writing;
 - ii. If either Party becomes insolvent or otherwise materially prejudiced with respect to their ability to carry on business in the manner in which they were able on the date of execution of this Deed;
 - iii. If amendments to any applicable law or regulation, or other new legislation that comes into effect, significantly change the nature of the rights and obligations contained herein;
 - iv. If a force majeure event occurs which causes interference with, delay, loss or damage and those circumstances continue or are likely to continue, or the effects of the interference, delay, loss or damage are not likely to be reduced or overcome in time for the Parties to ensure they meet their obligations;
 - v. If a material warranty as provided by a Party pursuant to clause 3 herein becomes or is otherwise proven to be incorrect or inaccurate and cannot be rectified;
 - vi. If a Party breaches any essential term of this Deed or fails to perform any obligation hereunder ("the Defaulting Party"), the other Party may terminate this Deed if:
 - A. Such default continues for two weeks after receipt by the Defaulting Party of written notice from the other Party specifying the default and requesting that the default be remedied; or
 - B. In the event the other Party performs the Defaulting Party's obligation or rectifies the damage, the direct and indirect costs and expenses incurred in doing so have not been reimbursed to the other Party by the Defaulting Party within two weeks after the Defaulting Party's receipt by the other Party of the relevant Invoice(s).
 - b. Termination of this Deed under this clause is without prejudice to any rights or remedies that may have arisen out of any breach of this Deed occurring prior to completion, at common law or in equity.
 - c. For the avoidance of doubt, subject to any provision of this Deed evincing a contrary intention, termination does not extinguish any rights MVP may have to consideration and / or reimbursement pursuant to clause 5 above, nor the obligation of the Client to ensure same.

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8. Indemnification

The Parties expressly acknowledge and agree that:

- a. No Party guarantees the Completion of the Project;
- b. The Parties may be relying on representations made and / or warranties given by other Parties in this Deed and that, as such, the Parties may have, and may continue to, assume considerable risk, including but not limited to through the fulfilment of their respective obligations, that the Parties may not otherwise have endeavoured to assume in absence of the Parties' execution of this Deed;
- c. The Parties acknowledge that, in the event of a breach, derogation from, inability, unwillingness or refusal to comply with the terms of this Deed, the Parties would have relied on the other Party's representations and / or warranties to their detriment and that, as such, the Party in breach will indemnify the other Party for any reasonable costs or expenses, whether direct or indirect, present or future, incurred by those Parties in connection with this Deed;
- d. Subject to MVP acting in breach or outside the scope of the provisions of this Deed, the Client specifically indemnifies MVP against the following occurrences:
 - i. Any and all Claims arising in relation to the Project;
 - ii. Any and all liability for any damage arising to any Party as a result of the Client's use of the Products;
 - iii. Any and all theft, damage or loss relating to any of the Products;
 - iv. Any ancillary loss or damage, suffered by the Client or any third party.
- e. Without limiting any other right or obligation which a Party may have under this Deed or a covenant herein or otherwise, and subject to the remainder of this clause, each Party indemnifies and will keep indemnified the other Party for any Claims or other loss or damage suffered as a result of the other Party's breach of this Deed or arising from the breach of any law, regulation, by-law or order of any relevant competent authority affecting the performance of that Party's obligation under this Deed or the covenants herein; and
- f. Any indemnity under this Deed will be independent of any other obligation of any Party and is irrevocable and will continue despite expiration or termination of this Deed. Any Party may enforce any indemnity without or before incurring any expense.

9. Relationship of the Parties

Nothing in this Deed is to be construed as constituting the Parties as partners, or as creating between the Parties the relationship of employer and employee, master and servant, or principal and agent and no Party has (and must not represent that it has) any power, right or authority to bind the other, unless the contrary intention is expressed in the provisions of this Deed.

10. Variation

No variation of this Deed will be of any force or effect unless it is in writing and signed by all Parties, and any such variation may be subject to additional charges.

11. Assignment

No Party may assign its rights under this Deed without the written consent of the other Parties.

12. Agreement Documents, Entire Agreement and Acceptance

- a. This Deed, in addition to any letter or email of offer and accompanying Schedule sent by MVP to the Client ("the Agreement Documents"), together constitute the entirety of the Agreement between the Parties.
- b. The Agreement Documents embody the entire agreement between the Parties relating to the subject matter of this Deed, and the Agreement Documents supersede and replace any prior and contemporaneous agreements and understandings between the Parties relating to the subject matter of this Deed.
- c. The terms of this Deed will be taken to be accepted upon the written confirmation from the Client of MVP's instructions to proceed with the Project.

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- d. This Deed, and the Agreement Documents, may be executed in counterparts, each of which will be deemed to be an original and all of which together will constitute one instrument and this Deed.

13. Document to enure

Subject to any express terms of this Deed evincing a contrary intention, all of the clauses of this Deed survive termination of this Deed for any reason and continue to be binding upon the Parties and enure for the benefit of the Parties.

14. Governing law and jurisdiction

This Deed is governed by the law of New South Wales and the Parties:

- a. submit to the non-exclusive jurisdiction of its courts and courts of appeal from them; and
- b. will not object to the exercise of jurisdiction by those courts on any basis.

15. Dispute resolution

- a. If a dispute arises out of or relates to this Deed (including any dispute as to the meaning, performance, validity, subject matter, breach or termination of the Deed or as to any claim in tort, in equity or pursuant to any statute) ("Dispute") a Party may not commence any court or arbitration proceedings relating to the Dispute unless it has complied with the following paragraphs of this clause, except where the Party seeks urgent interlocutory relief.
- b. A Party claiming that a Dispute has arisen under or in relation to this Deed must give written notice to the other Party specifying the nature of the Dispute.
- c. On receipt of that notice by the other Party, the Parties must endeavour in good faith to resolve the Dispute expeditiously using informal dispute resolution techniques such as mediation, expert evaluation or determination or similar techniques agreed by them.
- d. If the Parties do not agree within seven days of receipt of the notice (or such further period as agreed in writing by them) as to:
 - i. The dispute resolution method and/or procedures to be adopted;
 - ii. The timetable for all steps in those procedures; and
 - iii. The selection and compensation of the independent person required for such technique;
 - iv. The Parties must mediate the Dispute in accordance with the Mediation Rules of the Law Society of New South Wales and the President of the Law Society of New South Wales or the President's nominee will select the mediator and determine the mediator's remuneration.
- e. In the event the Dispute is not resolved by mediation within fourteen days of written notice by one Party to the other of the Dispute (or such further period agreed in writing between the Parties), either Party may refer the Dispute to arbitration. The arbitrator shall be agreed between the Parties within ten days of written notice of the referral by the referring Party to the other, or failing agreement such as appointed by the President of the Law Society of New South Wales or the President's nominee. In either case the arbitrator shall not be a person who has participated in an informal resolution procedure in respect of the Dispute.

16. Severance

- a. In the event of any covenant or other provision of this Deed being declared invalid, illegal, unlawful or otherwise being incapable of enforcement, all other covenants and provisions of this Deed shall nevertheless prevail and remain in full force and effect.
- b. In the event of any such provision being severed the Parties must endeavour to agree upon provisions in substitution for the severed provision that are not illegal and that substantially express the meaning of the severed provision.

17. Independent advice

- a. The Parties to this Deed acknowledge and represent to each other that they have obtained, or have had the opportunity to obtain and have elected not to so obtain, separate and independent legal, accounting and / or financial advice as to the terms of this Deed and as to any obligations, rights or potential liabilities that may arise under this Deed.

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b. Each Party relies on the acknowledgement and representation given in this clause by each other Party.

18. Absolute bar

This Deed may be pleaded and tendered by any Party as an absolute bar and defence to any proceeding or Claim brought in breach of the terms of this Deed or otherwise in relation to this Deed.

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