

Media Service Agreement

(Commercial Use Licence)

This agreement is made between Karl Dinnington (trading as “Down to Earth Media”) with ABN 27 440 078530 (the “**Service Provider**”) and the client as specified in the Instruction Schedule (the “**Client**”)

Background

- A. The Service Provider is in the business of creating photographs and videos.
- B. The purpose of this agreement is to record the terms agreed for a photographic/videographic assignment for the Client.
- C. All contracts and transactions between the Service Provider and the Client whether made orally or in writing are subject to these terms and conditions which must be deemed to be incorporated into any contract between the Service Provider and all or any of his Clients.

The terms of this agreement are:

1. Definitions and Interpretation

1.1. Definitions

"Assignment"	means services and a piece of work to be undertaken by the Service Provider under the terms of this agreement which is fully described as to terms and scope in the Instruction.
"Confidential Information"	means all information about each party, including information created or arising from this agreement, that is expressly marked as confidential.
"Event"	means the event described in the Instruction.
"Fee"	means all money payable by the Client to the Service Provider, however described, for work on the Assignment.
"Images"	means video or single photographic images recorded by the Service Provider in any medium.
"Instruction"	means a written instruction for a specific Shoot, as set out in the Instruction Schedule (Schedule 1) by the parties.
"Model Right"	means any right of a person to the privacy of its personal image or other feature by which it could be identified. It also means a right of a person in respect of any building or thing owned by any person.

“Shoot” means the occasion when the Service Provider acts on the Instruction.

1.2. Interpretation

In this agreement unless the context indicates a contrary intention:

- 1.2.1 headings are for convenience only and do not affect interpretation;
- 1.2.2 a reference to any party includes that party's executors, administrators, successors, substitutes and assigns, including any person taking by way of novation; and
- 1.2.3 words importing the singular include the plural (and vice versa), words denoting a given gender include all other genders, and words denoting individuals include corporations (and vice versa).

2. Warranties for authority

Each of the parties warrants that it has power to enter into this agreement and has obtained all necessary approvals to do so.

3. The agreement

- 3.1. Subject to clause 3.3, the Service Provider agrees to complete the Assignment and the Client agrees to pay the Fees, as both set out in the Instructions and subject to the terms of this agreement.
- 3.2. A contract to undertake each Assignment is made when the Service Provider agrees to provide the services set out in the Instructions and the Client makes payment of the deposit specified in the Instruction (“Deposit”).
- 3.3. The Client agrees to provide accurate, timely and complete information and fully cooperate with the Service Provider to enable him to perform his part of this agreement.
- 3.4. With effect from today the Client must nominate a key person who must be authorised to represent the Client, to give instructions to the Service Provider and must cooperate with the Service Provider at the Shoot. The name and details of the Client’s authorised representative are set out in the Instructions.
- 3.5. The Service Provider agrees that he will fully cooperate with the authorised representative to perform his part of this contract.
- 3.6. If due to any reason the Service Provider is not able to perform his part under this agreement, then the Service Provider may provide an alternative photographer of equivalent skills and expertise.

- 3.7. If the Service Provider does provide a replacement, then the replacement will complete the Assignment in accordance with the terms set out in this agreement.
- 3.8. Nothing in this contract prevents the Service Provider from entering into a similar contract with any other person.

4. The Assignment

- 4.1. The work under each Assignment must be set out in an Instruction. The Instruction will describe, among other data:
 - 4.1.1 event or occasion (for example: the conference XY);
 - 4.1.2 date;
 - 4.1.3 latest time when Service Provider is required to start work;
 - 4.1.4 media (e.g.: digital download link, printed photographs, CD ROM, etc.).
 - 4.1.5 name or registered office of location (address);
 - 4.1.6 latest attendance time required: [time of day when Service Provider is free to leave];
 - 4.1.7 arrangements in relation to special travel, accommodation and subsistence as may be required.
- 4.2. 72 hours prior to the commencement of the event or occasion, the Client must provide to the Service Provider:
 - 4.2.1 the event set list, schedule or run sheet;
 - 4.2.2 the event layout;
 - 4.2.3 the name, location and time of any key personnel to be covered;
 - 4.2.4 the description, location and time of any key events or scenes to be covered,and the Service Provider agrees to use reasonable endeavours to achieve any such specified coverage.

5. Fee and payment

- 5.1. The Client agrees to pay the Fees set out in the Instruction.
- 5.2. The Client must pay the Deposit at the time of entering into this agreement.
- 5.3. The Service Provider will provide the Client with an invoice for the Fees after the Event.

- 5.4. Payment of the Fees (minus the Deposit already paid) must be made within 7 days after the date of the event at the Service Provider's option by credit card payment or bank transfer to the account as communicated by the Service Provider, or in any other way agreed between the parties.
- 5.5. The Service Provider reserves the right to charge the Client interest in respect of the late payment of any money due under this agreement at the rate of 5 per cent above the cash rate from time to time of the Reserve Bank of Australia from the due date until receipt of payment.

6. Project management procedure

- 6.1. After the payment of the Deposit the Service Provider will communicate with the Client to make detailed arrangements for the Assignment.
- 6.2. If the Client provides a list of specific people, scenes or events of which it requires Images, the Service Provider will do his best to include those wishes in the Assignment.
- 6.3. Unless agreed by the parties otherwise in writing, the Client:
 - 6.3.1 undertakes to inform the persons of whom photographs and /or videos will be taken at the Event;
 - 6.3.2 warrants that (i) all necessary rights, model releases or other consents which may be required for the undertaking of the Assignment or for any reproduction of the Images are obtained prior to any Shoot, and (ii) the undertaking of the Assignment or any reproduction of an Image does not infringe any intellectual property right of a third party;
 - 6.3.3 acknowledges that the Service Provider gives no warranty or undertaking that any such rights, model releases or consents have or will be obtained whether in relation to the use of names, people, trademarks, registered or copyright designs or works of art depicted in any image; and
 - 6.3.4 undertakes to indemnify the Service Provider for all claims, damages, expenses or costs which might flow from any failure by the Client to comply with clause 6.3.1 or 6.3.2.
- 6.4. Subject to full payment of the Fees, the Service Provider will within twenty-one days after the date of the Event (unless another timeframe is agreed in the individual Instruction), send an electronic link to the Client's nominated email address that allows the Client to view and download low- and high-resolution Images produced by the Service Provider under the Instruction.

7. Changes or Cancellation of Assignment

- 7.1. If the Event is delayed or the Client makes a significant change to the Instructions, then the Service Provider is entitled to either

- 7.1.1 refuse to provide his services under the changed circumstances and is no longer bound by the terms of this agreement in which case the Service Provider may retain the Deposit, and if any work done (calculating with a reasonable hourly rate) and the expenses incurred up to the time a written notice of the delay or the significant change to the Instructions is received by the Service Provider, calculated to the nearest one hour, exceed the Deposit, the Client must pay to the Service Provider the exceeding amount within 7 days after the notice, and/or
 - 7.1.2 require renegotiation of the terms including the variation of any Fees.
- 7.2. If the Client cancels an Assignment at least 8 days (i.e., until 6:00 pm of the day that is 8 days prior the Event) before the Event, the Service Provider may retain the Deposit, but no further sum will be due. In the event that the Client cancels under the aforementioned sentence due to an event beyond the Client's control which was for a reasonable person not foreseeable, the Service Provider may retain the Deposit only to the extent of the work done and all expenses incurred up to the time a written notice of cancellation is received by the Service Provider, calculated to the nearest one hour.
- 7.3. If the Client cancels an Assignment within 7 days of the Event (i.e. after 6 pm of the day that is 8 days prior the Event), 50% of the full amount will be due. In the event that the Client cancels under the aforementioned sentence due to an event beyond the Client's control which was for a reasonable person not foreseeable, the Service Provider may retain the Deposit, and if the work done and all expenses incurred up to the time a written notice of cancellation is received by the Service Provider, calculated to the nearest one hour, exceed the Deposit, the Client must pay to the Service Provider the exceeding amount within 7 days after the notice.

8. The licence of Images to Client

- 8.1. The Client acknowledges that the Service Provider owns all right, title and interest in and to the Images at all times worldwide, and that the Client has no right to use any of them outside the express terms of this agreement.
- 8.2. Subject to full payment of all monies due under this agreement by the Client to the Service Provider, the Service Provider grants to the Client a personal, irrevocable, non-transferable and non-sub-licensable license as set out in paragraph 8.3.
- 8.3. The licence is granted for "Commercial Use". Commercial Use means the use of the Images for advertising or other commercial purposes of for profit purposes.
- 8.4. Unless otherwise agreed between the parties and set out in the Instructions, the Service Provider reserves the right to make reproductions of Images created during Assignments for marketing or promotional purposes.

9. Licence of “Model Rights” to Service Provider

- 9.1. The Client grants all its Model Rights to the Service Provider to the extent necessary to enable him to carry out the Assignment.
- 9.2. Unless otherwise agreed by the Parties and set out in the Instructions, the Client agrees that the Service Provider may use the Client’s personal Model Rights in the form of Images taken in an Assignment under this agreement to market his business as a photographer and/or videographer.

10. Use of sub-contractors

- 10.1. The Service Provider may perform any or all of his obligations under this agreement through agents or sub-contractors, subject to the Client’s prior consent which must not be unreasonably withheld.
- 10.2. The Service Provider remains liable for the performance of engaged sub-contractors under this contract.

11. Confidentiality

- 11.1. The parties are aware that in the course of the performance of the Assignment they will each have access to and be entrusted with Confidential Information of the other. Accordingly, each party undertakes in respect of Confidential Information provided by the other party, during and after completion of the Assignment, except as required by law or in the course of the party complying with its duties under his agreement, to:
 - 11.1.1 not disclose to any third party (and will use reasonable endeavours to maintain the secrecy and prevent the publication or disclosure of to third parties) of any Confidential Information; and
 - 11.1.2 not publish Confidential Information on any social medium except if consented to in writing by the other party.

12. Limitation of liability

- 12.1. Except for clause 2, the Service Provider excludes any and all other warranties of any kind or nature whether implied or statutory, including the implied warranties of title, merchantability and fitness for a particular purpose, except to the extent any warranty is implied and cannot be excluded by law. Where it is lawful to do so, the liability of the Service Provider for a breach of any warranty (that cannot be excluded, where implied) is limited to the supplying of the services or provide the work again or the payment of the cost of having the services supplied or work provided again, as determined by the Service Provider.
- 12.2. To the fullest extent permitted by law, the Service Provider (nor its sub-contractors) will under any circumstances be liable to the Client, whether in contract, tort (including negligence), strict liability or any other basis, for any special, incidental,

indirect or consequential loss or damage howsoever arising or resulting from or connected with this agreement including but not limited to:

- 12.2.1 economic loss, or loss of profits and revenues, production, income, business, utility, use, interest, opportunity, savings, opportunity, reputation, goodwill or market, or business interruption; or
- 12.2.2 loss of amenity represented by the Client having no visual record of an Event.
- 12.2.3 loss or damage suffered by the Client as a result of an action brought by a third party.

The above provisions apply even if such loss was reasonably foreseeable or the Service Provider had been advised of the possibility of the Client incurring it.

- 12.3. Except in the case of death or personal injury, the total liability of the Service Provider and its sub-contractors under this agreement, however it arises, must to the fullest extent permitted by law limited to in the aggregate to (i) the sum of the fees actually paid under the respective Assignment from which the liability arose, or (ii) \$10,000, whichever amount is lower. This applies whether an action is based on contract, tort or any other basis in law.
- 12.4. The Service Provider's liability for loss or damage sustained by the Client will be reduced proportionately to the extent that such loss or damage has been:
 - 12.4.1 caused by the Client's failure to comply with this agreement; and/or
 - 12.4.2 contributed to by the Client (including through failure of that the Client to take all reasonable steps to mitigate its relevant loss or damage), regardless of whether the claim is for breach of contract or otherwise.

13. Duration and termination

- 13.1. The agreement concerning an Assignment must continue until terminated:
 - 13.1.1 by completion of the Assignment and payment of the Fees to the Service Provider; or
 - 13.1.2 by one party giving 28 days' notice of termination to the other; or
 - 13.1.3 with immediate effect by the Service Provider if the Client fails to pay any sum due under this agreement within 14 days of the due date.
- 13.2. Upon termination or expiry of this agreement under 13.1, subject to clause 7, the Client must pay the Service Provider for all work done and for all expenses incurred up to the time the notice of termination is received by the Service Provider, calculated to the nearest one hour. The Service Provider is entitled to retain the Deposit to the extent of the above sum.

- 13.3. Despite termination of this agreement, clause 1, 5 and 7 (with regards to Fees unpaid and the Deposit), 8, 9, 11 (for a duration of 3 years after termination or expiry of this agreement), 12, 13.2, this clause 13.3, 14, 15, and 16 and all the provisions that are intended to operate or have effect after termination or expiration must continue to be fully valid and effective.

14. Force Majeure

An obligation of a party under this Agreement (and the corresponding obligation of the other party) is suspended for the time and to the extent the party is prevented from or delayed in complying with that obligation by a Force Majeure Event. "Force Majeure Event" shall mean any event outside of the reasonable control of the affected party, such as war, revolution, a national or statewide strike or industrial dispute, act of God, flood, or governmental restraint (including governmental restraints due to COVID19 or other epidemic or pandemic). On the occurrence or likely occurrence of a Force Majeure Event, the affected party must properly: (i) notify the other party and describe in reasonable detail the nature of the Force Majeure Event and its likely effect on the ability of the affected party to perform its obligation under this Agreement, and (ii) use reasonable endeavours to avoid, remove the cause, or mitigate the effects of, the Force Majeure Event and perform its obligations under this Agreement as soon as reasonably possible.

15. Entire agreement

- 15.1. This agreement contains the entire agreement between the parties and supersedes all previous agreements and understandings between the parties.
- 15.2. Each party acknowledges that, in entering into this agreement, the party does not rely on any representation, warranty, information or document or other term not forming part of this agreement.
- 15.3. Nothing in this agreement must create a partnership, agency or other relationship between the parties, other than the contractual relationship expressly provided for in this agreement.
- 15.4. Neither party must have, nor represent that it has, any authority to make any commitment on another party's behalf, except as provided in this agreement.

16. Miscellaneous matters

- 16.1. No amendment or variation to this agreement is valid unless in writing, signed by each of the parties or its authorised representative.
- 16.2. If any term or provision of this agreement is at any time held by any jurisdiction to be void, invalid or unenforceable, then it must be treated as changed or reduced, only to

the extent minimally necessary to bring it within the laws of that jurisdiction and to prevent it from being void and it must be binding in that changed or reduced form. Subject to that, each provision must be interpreted as severable and must not in any way affect any other of these terms.

- 16.3. No failure or delay by any party to exercise any right, power or remedy will operate as a waiver nor indicate any intention to reduce that or any other right in the future.
- 16.4. The parties agree that electronic communications satisfy any legal requirement that such communications be in writing.
- 16.5. In the event of a dispute between the parties to this agreement, then they undertake to attempt to settle the dispute by engaging in good faith with the other in a process of mediation before commencing arbitration or litigation.
- 16.6. So far as the law permits, and unless otherwise stated, this agreement does not give any right to any third party.
- 16.7. Any communication to be served on either of the parties by the other must be delivered by hand or sent by express post or by e-mail. It must be deemed to have been delivered:
 - 16.7.1 if delivered by hand: on the day of delivery;
 - 16.7.2 if sent by post to the correct address: within 72 hours of posting;
 - 16.7.3 If sent by e-mail to the nominated email address of the party: within 24 hours if no notice of non-receipt has been received by the sender.
- 16.8. The validity, construction and performance of this agreement must be governed by the laws of State of New South Wales and the parties agree that any dispute arising from it must be litigated only in that State.

Schedule 1 to Media Service Agreement (Commercial Use Licence)

<https://downtoearthmedia.com.au/wp-content/uploads/2024/06/DTEM-terms-conditions.pdf>

Instruction Schedule

I. Details of Assignment.

Service Provider

Karl Dinnington trading as Down to Earth Media (ABN: 27 440 078 530)

Client

[insert based on questionnaire]

Format of Content required

[insert based on questionnaire]

Event Description

[insert based on questionnaire]

Date

[insert based on questionnaire]

Latest time when Service Provider is required to start work

[insert based on questionnaire]

Latest time when Service Provider is required to finish work

[insert based on questionnaire]

Location of Event

[insert based on questionnaire]

Arrangements agreed in relation to travel, accommodation, meals and dress code as required

[insert based on questionnaire]

Client has all required model releases and consents in writing prior to session

Confirmed.

Client discount for visible watermark of our logo

[insert based on questionnaire]

Client agrees to credit us on social media platforms for a minimum of three months from first date of sharing with the tags that follow: Facebook - @DownEarthMedia Instagram @DowntoEarth_Media, YouTube - Credit Down To Earth Media; Audio Production - Produced by Down To Earth Media

Confirmed.

Client agrees to the standard Terms and Conditions in the Media Service Agreement (Commercial Use Licence)

Confirmed.

Other

[insert based on questionnaire]

II. Client's authorised representative

Name: *[INSERT]*

Position: *[INSERT]*

Contact Details *[INSERT Email address, phone number]*

III. Fees

Fees are: [exclusive GST]

For the Service Providers time outside the hours of the Event or Session specified above, an overtime fee of \$95 p/h exclusive GST applies.

The deposit is to be paid to:

Karl Dinnington

BSB: 814 282

Account: 51112845

The deposit amount is 50% of the Fee plus any applicable GST.

By payment of the deposit, the Client agrees to be bound by the standard Terms and Conditions in the Media Service Agreement (Commercial Use Licence) found at - www.downtoearthmedia.com.au/termsconditions updated in accordance with this Instruction.

The Client is requested to sign and return the below noting that the contract comes into effect upon payment of the deposit and irrespective of the signatures.