

BETWEEN Evolve Film Productions Pty Ltd ACN 620 266 542
PO Box 1622
MUDGEERABA, QLD, 4213
("Producer")

AND Rory Webley
146 Windermere Road
Hamilton, QLD, 4007
("Client")

OPERATIVE PART

1. Interpretation

In the interpretation of this agreement:

- (a) **Assembly Cut** means the Producer considering the Production material and assembling same into order and structure;
- (b) **Claims** means all actual or potential claims, actions, causes of action, suits, demands, proceedings, loss, damage, cost (including on a solicitors and own client basis) demand or otherwise howsoever arising;
- (c) **Client** means Rory Webley of 146 Windermere Road, HAMILTON, in the State of Queensland, 4007.
- (d) **Final Cut** means the completion of the Inclusions in their final form;
- (e) **Fine Cut** means the polished and refined version of the Rough Cut, where the Production materials undertake the process by which visual effects, graphics, music, colour grading, sound design and sound mixing is added;
- (f) **Inclusions** means the digital media content to be created by the Producer as set out under same heading in the Proposal and includes, without limitation, the Intellectual Property in respect of, or incidental to, such digital media content and the Process;
- (g) **Intellectual Property** means any statutory, proprietary and/or moral rights in respect of copyright, trade mark, design, patent, trade secrets whether registered or not, confidential or know-how, logos, names, drawings, televised content, digital content, or any other intangible creations of the human intellect recognised as forming part of the concept of intellectual property in Australia;
- (h) **Minor Variation** means adding, removing or replacing a Shot, changing audio effects, changing colour grading, changing graphics or anything else during the Rough Cut or Fine Cut stage that otherwise does not impact the integrity of its structure;
- (i) **Major Variation** means varying, adding, changing, amending or altering in any way the shape or structure of the content pertaining to the Rough Cut stage or Fine Cut stage during Post-Production;
- (j) **Payment Schedule** means the timetable and proportions in which the Proposed Budget must be paid by the Client to the Producer as detailed under same heading in the Proposal;
- (k) **Parties** means the Producer and Client;
- (l) **Party** means either the Producer or the Client;
- (m) **Post-Production** means the process by which the Producer and/or their editor uses the Production materials for the purposes of finalising the Inclusions and includes the Assembly Cut, the Rough Cut, the Fine Cut and the Final Cut, all of which occur after Production;
- (n) **Pre-Production** means the work performed, including conception and development of the Inclusions, prior to Production;
- (o) **Process** means the procedure or method by which the Producer will develop the Inclusions as detailed under same heading in the Proposal and includes all Pre-Production, Production and Post-Production works carried out by the Producer and/or any of its agents, assigns, contractors or subcontractors;
- (p) **Producer** means Evolve Film Productions Pty Ltd ACN 620 266 542 of PO Box 1622, MUDGEERABA in the State of Queensland, 4213;
- (q) **Production** means the action of the Producer physically shooting, capturing or recording segments of the raw (original and/or unedited) motion-picture and/or digital media or visual or audio recordings for the making or manufacturing of the Inclusions but otherwise does not include Post-Production;

- (r) **Proposal** means the parties understanding of the Inclusions, Process, Schedule and Timeframe, Proposed Budget, and Payment Schedule in respect of the Producer creating the Inclusions for the Client as attached to this Production Agreement and forming part of it;
- (s) **Proposed Budget** means the Producers professional fees for the Pre-Production, Production and Post-Production stages so as to finalise the Inclusions and is limited to the corresponding descriptive items as detailed under same heading in the Proposal;
- (t) **Rough Cut** means the Assembly Cut having been edited by cutting, trimming, adding and/or manipulating the Production materials to improve its structure, pacing, narrative, performance and emotion;
- (u) **Schedule and Timeframe** means the estimated schedule and timeframe for the Producer to complete the Inclusions as set out under same heading in the Proposal;
- (v) **Usual Hourly Rate** means the usual hourly charge by the Producer;
- (w) **Variation** means to vary the Inclusions in any way, shape or form and includes, without limitation, a change, amendment, alteration, iteration;
- (x) References to legislation or provisions of legislation include changes or re-enactments of the legislation and statutory instruments and regulations issued under the legislation;
- (y) Words denoting the singular include the plural and vice versa, words denoting individuals or persons include bodies corporate and vice versa, words denoting one gender include all genders, and references to documents or agreements also mean those documents or agreements as changed, novated or replaced;
- (z) Grammatical forms of defined words or phrases have corresponding meanings;
- (aa) Parties must perform their obligations on the dates and times fixed by reference to the capital city of Queensland;
- (bb) Reference to an amount of money is a reference to the amount in the lawful currency of the Commonwealth of Australia;
- (cc) If the day on or by which anything is to be done is a Saturday, a Sunday or a public holiday in the place in which it is to be done, then it must be done on the next business day;
- (dd) References to a party are intended to bind their executors, administrators and permitted transferees; and
- (ee) Obligations under this agreement affecting more than one party bind them jointly and each of them severally.

2. Agreement

- (a) Whereas:
 - (i) the Client wishes to engage the Producer to complete the Proposal; and
 - (ii) the Producer has agreed to complete the Proposal; and
 - (iii) the Parties wish to record the whole of their understandings, obligations and rights herein;
- (b) This Production Agreement forms the basis of engagement between the Parties and is deemed to be accepted by the Client where:
 - (i) the Client has physically signed and returned a copy of the Production Agreement; and/or
 - (ii) the Client giving the Producer instructions after having received this Production Agreement (whether by email or any other means); and/or
 - (iii) the Client contacting the Producer and advising of its acceptance; and/or
 - (iv) the Client paying to the Producer the Proposed Budget (whether in part or in full) or any other amount in anticipation of the creation of a binding relationship.

3. Proposal and Inclusions

- (a) The Parties hereby acknowledge and agree that they have mutually negotiated, read and understood the Proposal;

- (b) The Producer hereby acknowledges and agrees that it has the knowledge, experience and/or qualifications to create the Inclusion;
- (c) The Client hereby acknowledges and agrees that:
 - (i) the Proposal contains all the necessary information, requirements, objectives and brief of the Client to the Producer;
 - (ii) the Producer is a mere conduit with the know-how and experience and/or qualifications to undertake and create the Inclusions, and is only passively allowing such creation and is not responsible for it in any capacity howsoever arising;
 - (iii) the Inclusions are not the subject of any Intellectual Property infringements of any third-party, noting specifically that the Client is solely (to the exclusion of the Producer) required to ensure that proper and adequate searches and research is required to prevent and refrain from use of a third-parties Intellectual Property.

4. Pre-Production and Production requirements and obligations

- (a) At the Pre-Production stage, unless the Proposal includes an express provision dealing with the Producer being required to obtain applicable film or photography permits and/or licencing, it is the sole responsibility of the Client to ensure that it complies with such local laws and obtains all such permits and/or licencing.
- (b) During the Production stage, the Client and its employees, agents, contractors and subcontractors:
 - (i) voluntarily enter into the risk of loss, damage, death or injury by engaging with the Producer in relation to activities that are in all probability dangerous and/or alternatively are in public areas which are uncontrolled; and
 - (ii) must not, under any circumstance, touch, disturb, tamper or damage the Producer's equipment;
 - (iii) must provide a safe working environment for the Producer and its agents and authorised personnel, free from risk of loss, damage, death or injury;
 - (iv) must follow all lawful directions and instructions of the Producer and its agents and authorised personnel during if given;
 - (v) must not a breach a law dealing with health or safety.

5. Variations

- (a) The Client is permitted and/or entitled to one (1) Major Variation and one (1) Minor Variation and the Producer is consequently required to undertake such works;
- (b) Other than in respect of the permitted and/or entitled Major Variation and/or Minor Variation, any further Variation required by the Client will affect the Proposed Budget and consequently result in an increase. In such respect:
 - (i) the Producer must notify the Client in writing of the Usual Hourly Rate and the estimated time for completion, the time of which shall correspondingly extend the Schedule and Timeframe; and
 - (ii) the Client shall confirm in writing their acceptance of the notification;
 - (iii) the Usually Hourly Rate for any Variation will be measured by the projected hours of work. For such purpose, the Producer will keep cost tracking records and will produce a brief narration of same to the Client together with any tax invoice raised from time to time to evidence the hours worked. Should the Client require a detailed explanation of the account, then it should contact the Producer. Time charging for this purpose will result in a higher Proposed Budget depending on the complexity of the Variation/s and other factors, including how many changes the Client may require from time to time. It is recorded in 1-minute units, with time rounded

up to the nearest 1-minute increment. For example, time spent on the Variation for less than 1-minute will be charged for 1-minute whereas time spent on the Variation exceeding 1-minute but less than 2-minutes will be changed at 2-minutes and so on.

- (iv) the Parties must act reasonably, having regard to the extent of the Variation.

6. Schedule and Timeframe

- (a) The Producer must use its reasonable endeavours to complete the Inclusions within the Schedule and Timeframe having regard to it being an estimation only and any matters that are outside the Producer's control or otherwise the result of the Client's conduct, requirements or requests.
- (b) The Client must not act unreasonably and/or hinder the Producer or any of its agents, contractors or sub-contractors from completing the Inclusions within the Schedule and Timeframe.
- (c) The Parties agree that the Schedule and Timeframe is an estimation of the Producer and is subject to change in the Producer's absolute discretion having regard to:
 - (i) the time that it takes the Producer and/or any of its agents, contractors or subcontractors to under the Pre-Production, Production and Post-Production work;
 - (ii) inclement weather or other factors not attributable to the conduct of the Producer;
 - (iii) the time that it takes for a Major Variation, Minor Variation or any other Variation.

7. Proposed Budget, Payment Schedule & Usual Hourly Rate and default

- (a) The Proposed Budget:
 - (i) is a fixed professional fee of the Producer as set out in the Proposal and agreed between the Parties and unless specifically stated, does not include properly incurred expenses / outlays which are in addition to the Proposed Budget and;
 - (ii) is payable by the Client and/or any guarantor herein referred to both jointly and severally in accordance with the Payment Schedule and may include an amount by way of deposit or security or any other amount herein contained in this Production Agreement;
 - (iii) may be increased by the Producer proportionally to the time spent for any Variation as set out in this Production Agreement;
 - (iv) may be increased as a result of the Client failing to meet its payment obligations pursuant to the Payment Schedule.
- (b) The Producer will issue tax invoices to the Client upon completion of specific tasks associated with the Payment Schedule and will render accounts from time to time including any applicable records for time spent and properly incurred expenses (where applicable).
- (c) Any invoice from the Producer will become due, owing and immediately payable by the Client within seven (7) days, or as otherwise set out in such invoice. For such purpose, the Client agrees to pay the amount by the due date, failing which interest will accrue at the rate prescribed under section 58(3) of the *Civil Proceedings Act 2011* together with a further 2.5 per cent (%) per annum as at the date of the default, compounding daily, until payment is received in satisfaction;
- (d) Any payment due, owing and payable to the Producer is to be paid to an account nominated by the Producer from time to time;
- (e) If the Client disputes any amount due, owing and payable to the Producer from time to time and for any reason, it must:
 - (i) Within five (5) business days of the dispute arising, notify the Producer of the reasons why ("**Monetary Disputes Notice**"); and
 - (ii) pay any portion of the amount due, owing and payable to the Producer that is not in dispute; and
 - (iii) within three (3) business days thereafter issuing the Monetary Disputes Notice follow the dispute resolution process in accordance with this Production Agreement.

- (f) If the Client refuses, fails or neglects to pay any amount(s) due, owing and payable to the Producer from time to time under this Production Agreement, then the Producer may, in its absolute discretion:
 - (i) immediately upon non-payment by the Client, provide a notice to suspend any and all works until such time that payment has been made (“**Notice of Suspension**”); and
 - (ii) after forty-eight (48) hours thereafter the Notice of Suspension and failure in this time by the Client to make such payments, terminate this Production Agreement by giving to the Client a notice together with reasons (“**Notice of Termination**”), at which time the Client shall become immediately liable for the Producer’s reasonable professionally fees and other properly incurred costs, together with any accrued interest, up until the date of termination.
- (e) Any guarantee and indemnity herein contained continues during and after the currency of this Production Agreement and the liability of the director(s) of the Client shall not be affected by the director(s) of the Producer giving time, or any other concession, indulgence or compromise to the Client for the performance of its obligations.
- (f) The client and/or its director(s) hereby jointly and severally charge in favour of the Producer all right, title and interest over their assets, land, reality or otherwise, and hereby authorise the Producer to lodge a mortgage or caveat over those assets to secure payment of all monies that the Client may owe from time to time to the Producer under this Production Agreement. For that purpose, the Client and/or its director(s) hereby agree to execute any necessary documents which are required to perfect the security granted herein and further hereby irrevocably appoints and grants to the Producer and/or its authorised representative the power to act as its/their attorney for the purposes of:
 - (i) signing anything or doing anything on its behalf to:
 - A. perfect any such mortgage or caveat herein referred; or
 - B. ensure the registration of any mortgage or caveat herein referred as an interest over, on, or in respect of the Client and/or its director(s) property; and
 - (ii) at any time after the Client fails to meet its payment obligations hereunder, doing anything:
 - A. in relation to any such mortgaged or caveated property as the Producer thinks fit, including but not limited to listing such property for sale to recover any such monies owing to the Producer (in addition to any enforcement costs on a solicitor and own client basis) pursuant to this Production Agreement ; and
 - B. that the Producer may lawfully authorise an attorney to do in relation to such mortgaged or caveated property.

8. Title, retention and licence

- (a) The Producer shall own and/or retain the Intellectual Property in respect of, or incidental to the Inclusions, the Process and Pre-Production, Production and Post-Production works until such time that the Client has paid to the Producer the Proposed Budget together with any other required fees and/or outlays set out in this Production Agreement.
- (b) Upon payment by the Client to the Producer of the Proposed Budget together with any other required fees and/or outlays set out in this Production Agreement or the Proposal, the Intellectual Property exclusively in relation to the Final Cut shall simultaneously transfer and hereafter vest with and be owned by the Client, to the exclusion of Pre-Production and Production works in respect of the Inclusions which are hereby retained by Producer by operation of this clause;
- (c) Upon the transfer of the Intellectual Property detailed in the preceding sub-clause, the Client hereby irrevocably grants to the Producer a world-wide commercial and personal licence to use the Intellectual Property for marketing, promotional, educational or other reasons in the discretion of the Producer.

9. Scope of liability and insurance

- (a) The Client hereby indemnifies and agrees to hold harmless the Producer now or into the future in respect of any Claim in relation to, or arising out of:
 - (i) the Client mishandling of the Inclusions;
 - (ii) the Client, it’s assigns, employees, contractors, subcontractors or authorised agents breaching a provision of this Production Agreement;
 - (iii) the Client negligently (whether by act or omission) causing loss, damage, injury or death by refusing, failing or neglecting to ensure strict adherence to its obligations under this Production Agreement;
 - (iv) the Client refusing, failing or neglecting to ensure that the Proposal is accurate, fit for its intended purpose, adequate and appropriate prior to execution of this Production Agreement;
 - (v) the Client breaching workplace health and safety laws in respect of its employees, agents, contractors and/or subcontractors during the Production stage.
- (b) The Client must hold and continue to hold professional indemnity, workplace compensation and public liability insurance or other like insurances to the commercial standard of \$20,000,000.00 commencing the date of execution of this Production Agreement and at least 12 months from completion of the Final Cut;
- (c) The Producer must hold and continue to hold public liability insurance to the commercial standard of \$20,000,000.00 commencing the date of execution of this Production Agreement and at least 12 months from completion of the Final Cut;
- (d) Where the Client is a company, its director(s) jointly and severally promise and / or guarantee the performance of all of its obligations under this Production Agreement, and hereby indemnifies the Producer from and against all, and any, Claims howsoever arising out of the breach or non-performance by the Client of any of the provisions herein contained in this Production Agreement;

- (g) Any guarantee and indemnity herein contained may be enforced against the director(s) of the Client without the director(s) of the Producer first taking action against the Client, or pursuing any other available recourse, and may be enforced despite any neglect or omission to enforce any rights against the Client, or if any of the agreements between the Client and the Producer are wholly, or partially unenforceable, or if the Client goes into administration or liquidation or alternatively if the Director(s) of the Client become, or commence the process to become, bankrupt.

10. Entire agreement

This Production Agreement, together with the Proposal, is the entire agreement and understanding between the Parties on everything connected with the subject matter therein, and supersedes any prior understanding, arrangement, representation or agreements between the Parties as to the subject matter contained herein.

11. Amendment

An amendment or variation to this Production Agreement is not effective unless it is in writing and signed by all the Parties.

12. Assignment

The Producer may, in its absolute discretion and at any time without notification to the Client, transfer, sell and/or assign any of its rights and/or obligations under this Production Agreement to a third-party.

13. Dispute resolution

If a dispute arises between the Parties, the complainant must not commence any court or arbitration proceedings, except where that Party seeks urgent interlocutory relief, unless it has first complied with this clause:

- (a) **Notification of dispute**
 - The complainant must inform the respondent in writing of the following:
 - (i) The nature of the dispute;
 - (ii) The outcome the complainant desires, and

(iii) The action the complainant believes will settle the dispute.

(b) **Endeavour to resolve dispute**

On receipt of the complaint by the respondent, both Parties will make every effort to resolve the dispute by mutual negotiation within 14 business days.

(c) **Mediation**

Any unresolved dispute or difference whatsoever arising out of or in connection with this Production Agreement shall be submitted to mediation under the Mediation Rules of the Resolution Institute, all such costs of which must be borne the complainant.

(d) **Court**

In the event that the Parties are unable to resolve their dispute at mediation, only then may they commence an action in a Court of competent jurisdiction.

(e) **Survival of this clause**

This clause survives termination of this Production Agreement.

14. Waiver

Any waiver by any Party to a breach of this Production Agreement shall not be deemed to be a waiver of a subsequent breach of the same or of a different kind.

15. Assurances

The Parties hereby warrant that they have the lawful authority or right to enter into this Production Agreement.

16. Events beyond control

Neither Party shall be liable to the other Party for any loss caused by any failure to observe the terms and conditions of this Production Agreement, where such failure is occasioned by causes beyond its reasonable control including but not limited to by fire, flood, riot, strike, war, inclement weather, restrictions and prohibitions or any other actions by any government or semi government authorities.

17. Severance

If anything in this Production Agreement is unenforceable, illegal or void, it is deemed severed and the rest of the Production Agreement to the

exclusion of such unenforceable, illegal or void part or provision and shall remain in full force and effect.

18. Notices

A notice or other communication to a Party must be in writing and delivered to that Party or that Party's address or practitioner in one of the following ways:

- (a) Delivered personally; or
- (b) Posted to their address when it will be treated as having been received on the second business day after posting; or
- (c) Faxed to their facsimile number when it will be treated as received when it is transmitted; or
- (d) Sent by email to their email address, when it will be treated as received when it enters the recipient's information system.

19. Counterparts

This Production Agreement may be executed in any number of counterparts each of which will be an original but such counterparts together will constitute one and the same instrument and the date of the agreement will be the date on which it is executed by the last Party.

20. Costs

Each Party will pay their own costs in relation to this Production Agreement.

21. Legal Advice

The Parties acknowledge that they have the right to obtain independent legal advice prior to executing this deed and have had the opportunity to do so.

22. Jurisdiction

The Parties hereby submit to the exclusive jurisdiction of the Courts and Tribunals of the State of Queensland.

23. Execution

This Production Agreement has been executed in accordance with the signatures contained on the Proposal, which are an acceptance to the provisions contained herein by the Parties.