**Letter of Agreement for PROFESSIONAL SERVICES-**

**PHOTOGRAPHY/Filming Commission**

***To be typed on Department Notepaper***

**Name of Contractor**

**Address of Contractor**

Date [ ]

Dear [……..],

This letter sets out the basis on which we agree that you will provide services [under purchase order no: insert] to the University

|  |  |
| --- | --- |
| “Services” | [*Insert brief description/project name*]  The Services are more fully detailed in Schedule 1. |
| “Start Date” | *Insert Start Date* |
| “End Date” | *Insert the End Date or Final Delivery Date* |
| Addresses for service of notices: | The University:  The Contractor: |

To confirm acceptance of the basis on which you will provide the Services please arrange for both copies of this Letter of Agreement to be signed and return one to me.

You acknowledge that any terms and conditions attached to any invoice or other document issued by it shall have no effect.

Yours sincerely,

[insert name and job title]

For and on behalf of the Chancellor, Masters and Scholars of the University of Cambridge

**I, [as authorised signatory for and on behalf of [insert Contractor name] (“the Contractor”), hereby enter “the Agreement”, comprising this Letter and the attached Schedules 1&2 and the Conditions for Professional Services in Appendix A.**

**Signed: [Position: ]**

**Name: Date:**

**Schedule 1- Specification**

1. Services to be provided:

|  |  |
| --- | --- |
| Work Stage/Deliverables | Delivery Date(s) |
| Insert details of the Services and Deliverables to be provided  University Location of Photography/Filming Shoot:  Subject of Photography/Filming: *[describe]*  Date(s) of Shoot:  Number of Photographs/Film Duration Required/  Format of Deliverables:  Credit: [*Photography OR Video*] by *[ ]*  *[delete if inapplicable]* |  |

1. Materials and Equipment (see condition 3.1f and g): Contractor to supply their own equipment and may not remove from University premises anything provided to the Contractor.

The Contractor shall and shall ensure that persons authorised by the Contractor brought to the University Location shall at all times:

* comply with any directions given by the University Representative and other officers of the University, including but not limited to directions as to access, parking, movement of vehicles, routing of power leads and security, so as to prevent injury or damage caused to the University Location, its employees, students or the general public;

* wear on their person valid security identification issued by the University at all times while on the premises of the University Location;
* observe any relevant Acts of Parliament, by-laws, regulations, health and safety requirements, fire regulations and other matters affecting the University or the Photo/Filming Shoot in any way; and
* remove from any part of the University Location at the end of the Photo/Filming Shoot all equipment used for the photography/filming, including without limitation, generators, temporary structures and mobile facilities not supplied by the University, and all litter and waste resulting from the Photo/Filming Shoot. The Contractor accepts that if these responsibilities are not carried out to the University’s satisfaction, the equipment, litter and waste may be removed by the University and the Contractor charged all costs and expenses incurred in doing so, such costs and expenses payable on demand.

3. Service delivery monitoring

4. University to own the intellectual property (see condition 9.1) – Yes

In consideration for the payment of the Fees, the Contractor:

* will deliver to the University all negatives, digital files and other photographic/film material taken at the University Location or elsewhere at the University whether or not of the Subject of Photography (“Photographic/Film Material”);
* hereby assigns to the University all and any copyright, worldwide, together with any renewals and extensions thereof in the Photographic/Film Material;
* hereby assigns to the University all and any publication right which may arise by reason of the publication or communication to the public of any work depicted in the Photographic/Film Material
* waives all moral rights in respect to the Photographic/Film Material to which the Contractor may now or at any time in the future be entitled to under the Copyright, Designs and Patents Act 1988 and under any similar laws in force in any jurisdiction.

The Contractor undertakes to obtain signed Consent Forms from any people featured in the images the Contractor has created.

The Contractor undertakes not to keep or retain any out-takes or other parts of the Photographic/Filming Material for the Contractor’s own purposes or for sale, assignment or licensing to anyone.

However, the University agrees that up to [*[specify number]* of the photographic images *OR* *[specify minutes or seconds]* of film/video footage*]*] may be used by the Contractor for the purposes of self-promotion on any website published by the Contractor provided that they cannot be downloaded by third parties, and if photographic images, the images are of low resolution. Any such use shall be conditional upon the following credit being given

© University of Cambridge.

The University shall own the physical property in the Photographic/Filming Material or digital files.

5. Personnel

“University Representative”: *insert name and contact details*

“Contractor Representative”: *insert name and contact details*

“Key Personnel”: *insert name and contact details*

[Minimum qualifications and experience required: *set out minimum requirements]*

Sub-contracting (including sole trader right to substitute a worker) needs consent:

* Yes/No for these services:

1. PI insurance required - Yes/No

PI insurance to exceed £500,000 (see condition 8.1) – Yes [Value required: ]/No

Schedule 2 – **“Fees”**

**Fees, inclusive of VAT (see condition 7.1).**

**Note: The University does not pay in advance.**

***Delete whichever options (a-c) do not apply***

Full payment on successful completion.

Phased payment: Save as otherwise expressly agreed, Fees shall be paid as follows:

|  |  |  |
| --- | --- | --- |
| **Work Stage/Deliverable[[1]](#footnote-1)** | **Percentage (%)**[[2]](#footnote-2)  **of a total Fixed Fee** | **Fixed Sum (£)[[3]](#footnote-3)**  **ie rate for a deliverable** |
|  |  |  |
|  |  |  |
|  |  |  |
|  |  |  |
| **TOTAL** |  |  |

Any time based or additional Fees are to be calculated as follows:

|  |  |  |
| --- | --- | --- |
| **TYPE OF SERVICE** | **Daily Rate (£/day)** | **Hourly Rate (£/hour)** |
|  |  |  |
|  |  |  |
| **COST CEILING FOR COMPLETION OF THE SERVICES:** |  |  |

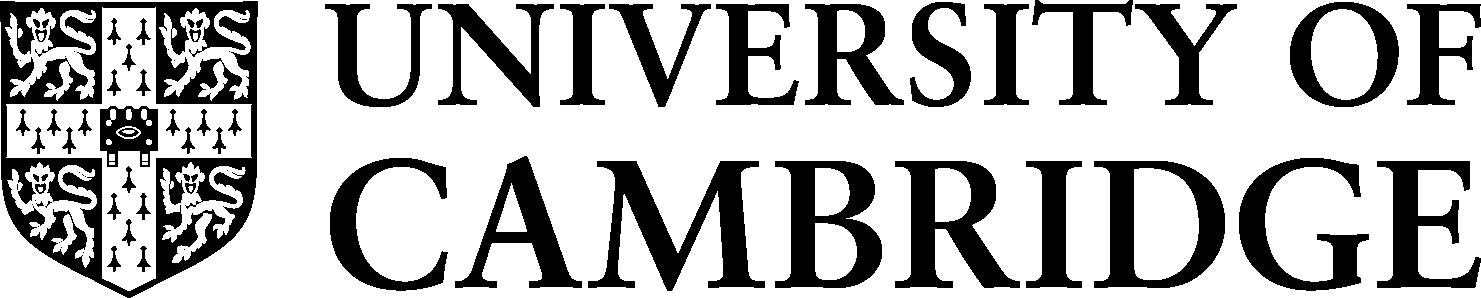
**Invoicing** (see condition 7.2)

The Contractor shall be entitled to invoice on completion of the Services or of a stage in the previous month and no more frequently than monthly for time based Fees.

**Expenses**

Fees shall include all expenses [other than *insert any specific categories of reimbursable expenses* and provided the University gives prior written approval].

**Appendix A**

**PROFESSIONAL**

**SERVICES CONDITIONS**

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**1 DEFINITIONS AND INTERPRETATION**

1.1 Unless the contrary intention appears, the following definitions apply:

**“Agreement”** means these professional services conditions, the Specification and Pricing Document and any document identified as a contract document in the Specification and Pricing Document**;**

**“Background”** means all Intellectual Property Rights owned by or licensed to a party prior to the date of the Agreement, which rights are Confidential Information of that party;

“**Confidential Information**” means all information (written or oral) not in the public domain concerning the business and affairs of either party which is obtained in connection with the Agreement;

**“Fees** “are defined in the Specification and Pricing Document;

**“Key Personnel”** if any are specified in the Specification and Pricing Document;

**“Intellectual Property Rights”** meanspatents, trade marks, service marks, registered designs, copyrights, database rights, design rights, confidential information, applications for any of the above, and any similar right recognised from time to time in any jurisdiction, together with all rights of action in relation to the infringement of any of the above;

**“Licensed Materials”** any Background specifically identified as a deliverable in the Specification and Pricing Document;

**“Representative”, “Representatives”** are the parties’ Representatives specified in the Specification and Pricing Document or their nominee or replacement notified in writing from time to time;

**“Specification and Pricing Document”** means the specification and pricing document issued by the University and completed by the Contractor;

**“Services”** are defined in the Specification and Pricing Document;

**“Term”** means from the “Start Date” and until any “End Date” (both as set out in the Specification and Pricing Document) unless terminated in accordance with the Agreement or extended by mutual agreement;

**“University Material”** all University information and material, including data, accessed by Contractor or supplied to it by the University in relation the Agreement, all of which material is the University’s Confidential Information;

**“Work”** means everything the Contractor produces in performing the Services, including deliverables, documents, code, settings, data and other information.

1.2 In the Agreement the words “**include**” and “**including**” are to be construed without limitation; and headings shall not form part of or affect the interpretation of any part of the Agreement.

**2 APPOINTMENT**

2.1 The University appoints the Contractor to perform the Services during the Term in accordance with and subject to the terms of the Agreement and the Contractor accepts such appointment.

**3 SERVICES**

3.1 The Contractor shall

(a) use the professional skill, care and diligence which may reasonably be expected of a qualified and competent professional experienced in the provision of services of similar scope and standard to those required under the Agreement;

(b) comply with agreed timescales and provide agreed outputs;

(c) keep records and time sheets for all work done and keep the University fully informed as to performance and progress of the Services;

(d) comply with all reasonable University instructions and co-operate with University staff and other parties engaged or collaborating with the University in connection with the Services;

(e) comply with all UK or EC statutes, orders, regulations, directives, standards, or codes of practice from time to time in force relevant to the Services;

(f) unless otherwise agreed provide all equipment and materials; and

(g) not remove from University premises anything provided to the Contractor (including documents, data, software, information or physical property) unless the University consents and then only if kept properly secure.

3.2 The University does not commit itself to an exclusive arrangement with the Contractor or giving any level of work. The Contractor may work for other clients provided this does not interfere or conflict with working for the University.

**4 Authority**

4.1 A party’s Representative has the authority to act on behalf of that party in respect of the Agreement (including in respect of all communications).

4.2 Nothing in the Agreement shall be construed as creating any agency, partnership or other form of joint enterprise between the parties and (except as expressly set out in the Specification and Pricing Document ) neither party has the authority to act for or bind the other party in any way. The Contractor shall ensure that its personnel do not represent or hold themselves out as University employees; and understand that they are neither University employees nor entitled to participate in any University grievance procedure.

**5 PERSONNEL**

5.1 The University shall not have any direct control over or responsibility for the Contractor’s personnel, training or method of work. In particular, the University acknowledges that the Contractor’s personnel are professional contractors who will use their own initiative as to the manner in which the Services are delivered. Subject thereto, no Key Personnel shall be changed without the University’s prior written consent, not to be refused unreasonably or delayed. Other than in cases of emergency, there shall be an appropriate handover period.

5.2 The Contractor warrants that personnel deployed shall be of a sufficient number, competence and experience and be properly qualified and fully briefed.

5.3 The University may by notice in writing (giving reasons), require removal of any person from the Services and the Contractor shall promptly provide a replacement.

5.4 The Contractor shall ensure that any person engaged in performing the Services in the United Kingdom at all times has the necessary leave to enter and remain in the United Kingdom and is not subject to any restriction relevant to the provision of Services.

**6 CHANGE CONTROL**

6.1 If the University wishes to vary the Services it shall submit such proposed variation in writing to the Contractor and require a quotation. The Contractor shall quote within 14 days (or such longer period as the parties may agree is reasonable).

6.2 No variation shall be implemented by the Contractor unless the University notifies the Contractor in writing that the University accepts the Contractor‘s quotation.

6.3 No adjustment of the Fees or additional payment will be due merely because the University re-orders or spreads the Services out over a longer period.

**7 FEES**

7.1 For the satisfactory performance of the Services the University shall pay the Contractor the Fees which shall, unless otherwise agreed, be inclusive of all expenses and disbursements, insurances, travelling, subsistence, photocopying and preparation of all documents required and VAT where applicable.

7.2 Payment shall be made within 30 days of the end of the month in which the University receives a correct invoice. Invoicing frequency is set out inthe Specification and Pricing Document.

7.3 If the Contractor fails to perform any of the Services in accordance with the Agreement including failure to produce any deliverable then the University will be entitled to require the Contractor to repeat the relevant service or to revise or reissue the relevant deliverable at no additional cost to the University.

7.4 Interest shall be payable on all outstanding sums payable under the Agreement from due date until payment of such sums at the rate of 2% per annum above the base rate from time to time of Barclays Bank Plc.

7.5 The Agreement is a contract for the provision of services not employment. Accordingly, subject to Condition 7.6 below, the Contractor shall be responsible for and shall fully indemnify the University against (and the University may set off against the Fees) any income tax or social security contributions and deductions (including any related interest, penalties or costs), which may at any time be levied, demanded or assessed by the appropriate tax or other statutory authority against the University in relation to the Contractor or its staff or agents or the Fees. The obligation in this Condition to indemnify the University shall be reduced to the extent of any deductions made by the University under Condition 7.6

7.6 Notwithstanding the provisions of Condition 7.5, the University may, in its absolute discretion, determine that it is required by law (for example under legislation relating to Off Payroll Working) to deduct tax and/or Employee’s National Insurance Contributions from the Fees before payment to the Contractor. The University shall also be entitled to deduct from the Fees Employer’s National Insurance contributions and any other sums which it is legally required to pay as a consequence of such determination. The Contractor is expected to have taken into account the possible deduction of such amounts in the calculation of the Fees. The Contractor shall provide to the University all such information as it may reasonably require for the purposes of such determination or deduction, including the National Insurance number of any individual involved in the provision of the Services.

7.7 Where the Contractor is an agency, the Contractor acknowledges that the University is a public authority for the purposes of legislation relating to “Off Payroll Working”. The Contractor undertakes that it shall account to HMRC as required for all tax and National Insurance payable on any sums for which it is invoiced for work undertaken in the provision of the Services pursuant to the Agreement by a personal service company, limited liability partnership, agency or other body in respect of which the University shall have notified the Contractor that the “Off-Payroll Working” legislation applies.

7.8 As a pre-condition to payment of time based or additional Fees, the Contractor must maintain full and accurate records of the time spent and the nature of work involved, which records will be made available at no charge to the University on reasonable request.

**8 INSURANCE**

8.1 The Contractor shall maintain (and provide evidence of) public liability insurance of at least £1 million during the Term and professional indemnity insurance during the Term and for 6 years afterwards of at least £500,000 (or such higher cover specified in the Specification and Pricing Document). Such policies shall contain an indemnity to principals clause and not exclude litigation in England.

**9 INTELLECTUAL PROPERTY**

9.1 Where the University has so required prior to the Start Date, the Contractor acknowledges that all existing and future Intellectual Property Rights in the Work shall belong to the University. To the extent that any Intellectual Property in the Work is capable of prospective assignment, the Contractor now assigns that Intellectual Property to the University; and to the extent any Intellectual Property in the Work cannot prospectively be assigned, the Contractor will assign that Intellectual Property to the University as and when it is created, at the University’s request. The Contractor hereby waives absolutely and irrevocably any relevant moral rights granted under the Copyright, Designs and Patents Act 1988. The Contractor shall be entitled, subject to condition 10, to utilise any generic knowledge, skills expertise, programming tools, problem solving methodologies and associated checklists, templates or forms developed in performance of the work which may have general applications for other clients. The Contractor shall do or procure to be done everything which the University may reasonably require from time to time for the purposes of giving full effect to this Agreement, including the execution and delivery of documents.

9.2 To enable the University to benefit from the Services the Contractor hereby grants to the University an irrevocable, non-exclusive, royalty-free licence to use and reproduce for all University purposes

(a) Licensed Materials

(b) Sponsor Background used to perform the Services and the Work and

(c) (where the Contractor retains the Intellectual Property Rights in the Work) all Work.

9.3 The Contractor warrants that none of its Background (used to perform the Services), Licensed Materials or the Work will infringe the Intellectual Property Rights of any third party and the Contractor shall indemnify the University against all loss, actions, costs, claims, demands, expenses and liabilities suffered by the University through breach of this warranty.

9.4 The Contractor shall not, without the prior consent of the University, use the name, any adaptation of the name, any logo, trademark or other device of the University.

**10 DATA PROTECTION, CONFIDENTIALITY, AUDIT**

10.1 The Contractor shall maintain procedures to ensure that all University Material is only used for performance of the Agreement and is kept secure and not disclosed to any third party. The Contractor shall observe the General Data Protection Regulation 2016/679 (“GDPR”) clauses, as set out in as set out at <http://www.admin.cam.ac.uk/offices/purchasing/suppliers/new/GDPR.pdf> , which willform part of the Contract if the Contractor stores or processes personal data (all as defined in the GDPR) for the University.

10.2 Each of the parties undertakes to the other to keep all Confidential Information of the other party confidential, except if consent has been given or to the extent that:

(a) disclosure or use is necessary by the relevant party for the exercise of rights or the proper and effective performance of obligations under the Agreement (including disclosure by either party to its insurers and professional advisers); or

(b) it is advised that disclosure is required by law to any government, governmental department, agency, regulatory or fiscal body or authority.

10.3 The Contractor shall use all reasonable endeavours to ensure that its employees, agents and sub-contractors are reliable, trained and comply with this condition.

10.4 The University shall be entitled at any time on reasonable notice by itself or its appointee to inspect any of the Contractor’s papers and records brought into being or received by the Contractor for the performance of the Agreement. The Contractor shall ensure that all transactions done in contemplation or performance of the Contract are fully and promptly recorded.

**11 ASSIGNMENT AND SUB-CONTRACTING**

11.1 The Contractor shall not assign or charge the benefit of the Agreement.

11.2 The Contractor shall not, without the prior written consent of the University, sub‑let the whole or any part of its duties under the Agreement. Where the University so consents, sub-letting shall not modify, diminish or reduce the liability or obligations of the Contractor under the Agreement nor, unless specifically agreed in writing, constitute permission to disclose University data.

**12 TERMINATION**

12.1 The University shall be entitled, at any time and without having to have or give any reason, to terminate the Agreement by giving not less than seven days’ notice in writing to the Contractor.

12.2 In addition, a party shall be entitled at any time to terminate the Agreement forthwith by giving notice in writing to the other party if any of the following apply:

(a) The other party has been in material default or breach of any one or more of its obligations under the Agreement and has not within 21 days’ notice of such default or breach rectified such default or breach to the innocent party’s reasonable satisfaction.

(b) The other party has been served with a notice pursuant to condition 12.2(a) on no less than three previous occasions during the Term.

(c) The other party ceases to carry on business, is unable to pay its debts when they fall due, is declared bankrupt, or an order is made or a resolution passed for its winding up or for the appointment of an administrator, receiver, liquidator or manager.

(d) If any person associated with the Contractor offers, promises or gives a financial or other advantage to bring about improper performance in relation to the award or execution of the Agreement (“bribery”) or attempts to defraud or succeeds in defrauding the University in any other way.

12.3 Upon any termination of the Agreement:

(a) the Contractor shall promptly take all practicable steps to bring to an end the Services in a diligent and orderly manner and within 14 days of termination shall deliver to the University or destroy, as the University shall direct all University Material and everything (including Work, data and documentation) prepared for the University in the course of providing the Services;

(b) except in the case of a termination under condition 12.2 (where the University shall be entitled to set off any losses sustained as a result of the breach of contract or other act or default of the Contractor) the University shall pay to the Contractor all sums then properly due and owing to the Contractor under the terms of the Agreement up to the date of termination in full and final settlement thereof;

(c) the University shall have no liability to the Contractor for any loss of profit, loss of contracts or other losses and/or expenses arising out of or in connection with such termination, save as otherwise agreed in writing with the University; and

(d) conditions 9, 10, 12.3, 13 and 14 survive termination.

**13 LIMITATION OF LIABILITY**

13.1 Subject to condition 13.2

(a) Neither party shall be liable for any loss, costs, damages or expenses (“Loss”) of an indirect or consequential nature including without limitation any loss of profit, revenue or anticipated savings.

(b) In respect of all other Losses each party’s liability shall be limited as follows:

|  |  |
| --- | --- |
| Loss of a type | Limit |
| Required to be covered by Contractor insurance required under the Agreement | the insurance level stipulated in condition 8.1 |
| Not required to be covered by Contractor insurance | 125% of the Fees paid by the University during the Term |

13.2 Nothing in this Contract shall exclude or limit liability for death or personal injury caused by negligence, bribery, fraud or fraudulent misrepresentation, third party claims or third party intellectual property right infringement.

**14. GENERAL**

* 1. The Agreement shall be interpreted in accordance with English Law and the English Courts shall have exclusive jurisdiction.
  2. The Agreement constitutes the entire agreement between the parties and cancels and is in substitution for all previous letters and oral and written agreements relating to the subject-matter of the Agreement between the University or any of its officers and the Contractor.
  3. All additions, amendments and variations to the Agreement shall be binding only if in writing and signed by the University and Contractor Representatives. It is not intended that any third party should have the right to enforce any term of the Agreement pursuant to the Contracts (Rights of Third Parties) Act 1999.
  4. Notices shall be deemed served on delivery, within 3 working days of first class posting in the UK (5 working days if posted outside the UK) or upon confirmed successful fax transmission before 5pm on a working day.
  5. The Contractor shall not unlawfully discriminate (directly or indirectly) within the meaning and scope of any law, enactment, order or regulation relating to discrimination in the provision of services to the public or in employment (whether in race, gender, religion, disability, sexual orientation, age or otherwise) or any statutory modification or re-enactment thereof. The Contractor shall to the extent relevant to delivery of the Services comply with the University’s equal opportunities policies which may be consulted on the University’s web-site. The Contractor shall take all necessary steps to secure the observance of these provisions by its agents, employees and sub-contractors. The Contractor shall co-operate with any investigation by the University or any body empowered to carry out investigations in relation to any alleged or suspected discrimination. Where Contractor personnel work on University premises, the Contractor shall ensure they observe all current published University policies relevant to performance of the Services, including without limitation those relating to health and safety, bullying and harassment, equality, use of computer facilities and data protection.
  6. The Contractor acknowledges that as an organisation carrying out business in England it must comply with the Modern Slavery Act 2015 and undertakes to do so. The Contractor will take steps to ensure its operations and supply chains are trafficking and slavery free, including without limitation imposing these obligations when purchasing or sub-contracting so that multi-level supply chains are addressed; failure will constitute a material remediable breach of contract. Conviction of any offence involving slavery and human trafficking by the Contractor, its employees or sub-contractors will constitute an irremediable breach of contract.

1. This must correspond with paragraph 1 of the Specification [↑](#footnote-ref-1)
2. Do NOT complete if fixed fees apply [↑](#footnote-ref-2)
3. Do NOT complete if percentage fees apply [↑](#footnote-ref-3)