



**vismedia.agency**

## **Terms & Conditions 2019**

### 1. Introduction

1.1 These terms and conditions constitute the entire terms and conditions upon which vismedia.agency provides the Service and upon which the Customer agrees to contract for the use of the Service.

1.2 This Agreement supersedes any written or oral representations, statements, understandings or agreements with respect to the subject matter of this Agreement, except where specifically varied by written agreement signed by an authorised representative of each party.

1.3 You, the Customer, confirm your acceptance of the terms of the Agreement by accepting or being deemed to accept a Quotation in accordance with paragraph 3 of these terms and conditions.

1.4 In the event of any conflict between the Agreement and any other document, the Agreement shall prevail.

### 2. Definitions

2.1 In this Agreement: "Agreement" means these terms and conditions together with the Quotation. In the event of any conflict between the Quotation and these terms and conditions, the Quotation shall prevail. "the Customer" and "You / Your" means the company, firm, person, persons, corporation or public authority identified in the Quotation as contracting for the Service and includes their successors or personal representatives. "the Quotation" means the letter or

email sent to the **Customer** by the Service Provider which sets out details of the Service to be provided, or estimated completion date (if any) an estimate of the costs in providing the Service and the basis on which these costs will be charged and such other specific contractual terms as may be appropriate. "**the Contract Price**" means the price payable by you for the Service as is initially estimated in the Quotation and as may from time to time be varied in accordance with these terms and conditions. "**the Service**" means the video production or photography services more fully described in the Quotation, as may be varied from time to time in accordance with these terms and conditions. "**the Service Commencement Date**" shall be the date the Service is available as set out in the Quotation.

### 3. Service Provision and Working Hours

3.1 Where we provide a Quotation to you, this constitutes an offer to contract with you on the terms of the Quotation and these terms and conditions. Our Quotation shall be open for acceptance by you for a period of 1 month or such shorter period as may be specified in the Quotation and after this period we reserve the right to amend the quote or reject any request for Service. You may accept an offer in writing (including email) and following your acceptance of our Quotation, the Agreement shall be binding on you and us. In addition, you shall be deemed to have accepted our Quotation if you request us to provide the Service set out in the Quotation.

3.2 We shall provide the Service as described in the Quotation.

3.3 We may at any time amend the Service for any reason including, but not limited to, technical, legal or business reasons but only with prior notice to you. You may terminate this Agreement without penalty within thirty days of receipt of such notice by you.

3.4 Unless otherwise stated in the Quotation, any dates quoted for delivery of services are approximate only. Time for delivery shall not be of the essence unless stated in writing by the client.

3.5 We shall use all reasonable skill and care expected of a professional firm in providing the Service.

3.6 A full day is regarded as 8 hours and a half day as 4 hours during the standard working day of the country in which the work is undertaken. Reasonable working hours in the UK are 9am to 6pm and any services that are required outside of these working hours will at the discretion of the Service Provider incur additional charges. These are based on a flat hourly rate of £100 per hour per individual.

#### 4. Customer Obligations

4.1 The Customer shall pay the charges for the Service in accordance with clauses 6 and 7 below.

4.2 The Customer is responsible for providing a satisfactory level of cooperation and for providing within a reasonable time all necessary information and facilities to enable the Service Provider to produce and deliver a quality service, including:

4.2.1 Detailed written Brief.

4.2.2 Access to filming location in advance of provision of the Service.

4.2.3 Communication of correct project information and requirements including but not limited to correct point of contact details, times of filming, lighting at the venue, access requirements, and all other relevant and material details to support the filming process.

4.2.4 Material information of satisfactory quality to allow us to deliver a quality service.

4.3 Without prejudice to its rights in terms of Clause 9 hereof, each party is entitled to review the Agreement if the other party fails to perform its obligations in terms of either clause 3 or this clause 4.

4.4 The Customer agrees and undertakes to see that all necessary information is communicated to all parties involved in the production. The Service Provider is not responsible for briefing all parties unless stated in the Quotation.

4.5 The Customer shall notify the Service Provider within 72 hours of any problems with the Service, together with such information as the Service Provider may request.

4.6 The Customer is responsible for gaining permission to use intellectual property rights not owned by the customer and takes full responsibility for such undertakings.

5. Indemnification The Customer hereby indemnifies and holds harmless the Service Provider against all claims, demands, losses, damages, costs or expenses howsoever arising incurred by the Service Provider in connection with the Agreement as a result of a breach by the Customer of any provision of this Agreement, law or regulation and/or as a result of any third party legal action or threatened action in relation to intellectual property rights infringement howsoever arising. Without prejudice to the foregoing generality the Customer indemnifies and holds harmless the Service Provider from any and all claims, demands, losses, damages, costs or expenses arising out of the Customer's failure to obtain copyright or other intellectual property rights or other releases or permissions with respect to the logo or any other materials supplied to the Service Provider.

## 6. Service Charges

6.1 The Contract Price specified in the Quotation is an estimate of the costs of us providing the Service to you based on the amount of work involved in the provision of the Service. This estimate is based on the provision of the Service more particularly detailed in the Quotation and is based on the assumptions set out in the Quotation.

6.2 Where: (1) any of the assumptions set out in the Quotation prove to be incorrect; or (2) you request a change to the Brief or the scope or nature of the Service; or (3) additional work is required to supply your requirements over that which is specified in the Quotation; We will inform of any consequential change to the Contract Price and wherever reasonably possible we will do so prior to carrying out any additional work or incurring further costs. However, our intention is normally not to charge more than our estimate without your prior agreement.

6.3 For projects with a total value under £10,000 (before VAT and Expenses), the Customer shall pay the Contract Price on completion of the Service together with any VAT which may be

payable at the prevailing rate from time to time. For projects with a total value exceeding £10,000 (before VAT and Expenses), we will require instalment payments to be agreed in advance but typically we would invoice 30% before the pre-production phase, 30% after the initial production phase and 40% on project completion. A PO number will be required before the project starts along with details of the customer's invoicing methodology.

6.4 In addition to the Contract Price we shall be entitled to charge the Customer for any expenses reasonably incurred by us in connection with the provision of the Service.

6.5 If as part of the Service we are required to incur expenses (which may include (but not exclusively) engagement of third party service providers, travel or accommodation costs) or where we are required to procure additional equipment, we reserve the right to require.

## 7. Payment of Service Charges

7.1. Subject to any special terms (which we may agree with you in writing in the Quotation or otherwise) payment by you to us will be made within 30 days of the date of each invoice issued by us to you in relation to the Contract Price.

7.1.2 All travel expenses including flights and hotel accommodation will incur a surcharge of 15% of the total cost if booked and paid for in advance by the Service Provider.

7.1.3 All stock footage purchased from a third party supplier will incur a surcharge of 15% of the total cost if paid for in advance by the Service Provider.

7.2 If you fail to make payment within the period specified in clause 7.1 then, without prejudice to any other right or remedy available to us, we shall be entitled to

7.2.1 Suspend performance of the Service; and/or

7.2.2 Decline to grant any licence to the Customer to use intellectual property in terms of clause 15.1 hereunder; and/or

### 7.2.3 Terminate the Agreement.

## 8. Cancellation policy Video

8.1. If this Agreement is terminated (other than pursuant to clause 9.3) after the Quotation has been accepted by the Customer with less than two weeks notice before the proposed start date of the shoot, the Service Provider shall be entitled to payment of 100% of the total fee for the project which includes pre-production & production plus any already incurred expenses. (e.g flights, props, equipment hire etc) less the estimated post-production costs. If this Agreement is terminated between three and two weeks before the proposed start date of the shoot, the Service Provider shall be entitled to payment of 100% of the pre-production costs & 50% of the production costs plus any already incurred expenses. (e.g flights, props, equipment hire etc). If this Agreement is terminated between four and three weeks before the proposed start date of the shoot, the Service Provider shall be entitled to payment of 100% of the pre-production costs of the project plus any already incurred expenses. (e.g flights, props, equipment hire etc).

8.2. Photography If this Agreement is terminated (other than pursuant to clause 9.3) after the Quotation has been accepted by the Customer with less than one week's notice before the proposed start date of the shoot, the Service Provider shall be entitled to payment of 100% of the total fee for the project which includes pre-production & production plus any already incurred expenses. (e.g flights, props, equipment hire etc) less the estimated post-production costs. If this Agreement is terminated between one week and two weeks before the proposed start date of the shoot, the Service Provider shall be entitled to payment of 50% of the total fee for the project which includes pre-production & production plus any already incurred expenses. (e.g flights, props, equipment hire etc) less the estimated post-production costs.

## 9. Termination

9.1 vismedia.agency shall be entitled to suspend the Service in accordance with clauses 4.3 and 7.2.

9.2 Without prejudice to any other rights to which it may be entitled, The Service Provider or the Customer may terminate provision or use of the Service respectively with immediate effect if the

other party commits any material breach of any of the terms of the Agreement and, if the breach is curable, the breach remains unremedied after thirty days of the defaulting party being notified by the other party of the breach and of the other party's intention to terminate unless the breach is remedied.

9.3 Either party may terminate the Agreement immediately if the other party takes or suffers any action on account of debt or is insolvent.

10. Warranty The Customer warrants and represents to the Service Provider that any material supplied to the Service Provider for inclusion in the video production are owned by the Customer, or that the Customer has permission from the rightful owner to use each of these elements and that the Service Provider's use of such material shall not infringe the intellectual property rights of any third party.

## 11. Disclaimer and Limitation of Liability

11.1 The Customer uses the Service at its own risk and subject to clause 11 in no event shall the Service Provider be liable to the Customer for any consequential, incidental or special damage or loss including, but not limited to, loss of profits, loss of contracts, business interruptions, loss of or corruption of data or the Customer's inability to use the Service, however caused and whether arising under contract or tort, including negligence or otherwise except as expressly provided herein.

### 11.2 Subject to clause

11.3 The Service Provider's total liability to the Customer in connection with the Agreement or in respect of all other losses under the Agreement, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed the Contract Price.

11.4 Whilst the Service Provider shall use its reasonable endeavours to mitigate the effect of any external or third-party factors and shall use reasonable skill and care in providing the Service, we shall have no liability for delay in the provision of the Service or for any effect visimedia.agency Terms & Conditions upon the quality of the Service caused by external

activities within the filming environment, location, light, sound, third party interference with the conditions conducive to producing a quality product, project delays due to the Customer's third party supplier, quality of equipment, not delivering on time, the Customer's multiple staged work, problems with the Customer's internal.

11.5 The terms implied by sections 35 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Agreement.

11.6 If a court or any other competent authority finds that a provision of the Agreement (or part of any provision) is invalid, illegal or unenforceable that provision or part-provision shall to the extent required to be deemed deleted and the validity and enforceability of the other provisions of the Agreement shall not be affected. If any invalid or unenforceable provision would be valid, enforceable and legal if some part of it were deleted the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.

11.7 Additional costs, as agreed by the parties in each instance, may be due and payable by the Customer as a result of requests for requirements additional to the Services set out in the Order Confirmation.

11.8 The following circumstances may affect the production quality of the finished product; Supply of sound, image, photograph or logo, software, or legacy media or software supplied by the Customer, location disruption, external parties unplanned noise making or disruption when filming at the Customer's location. It is agreed that the Customer will use their best endeavours to ensure that the crew are given the fullest co-operation to perform their duties correctly including the provision of the proper health and safety protocols.

11.9 We shall have no liability in respect of the misuse by the Customer of content or materials supplied by us as part of the Service.

## 12. Force Majeure

12.1 In the event of a Force Majeure Event (as defined below) the obligations of the Service Provider shall be suspended for so long as the Force Majeure Event renders such performance

impossible. If a Force Majeure Event occurs for a period of in excess of two days, either party may terminate the Agreement by written notice to the other party.

12.2 Upon the occurrence of a Force Majeure Event, the Customer shall pay to the Service Provider 100% of the total fee for the project which includes pre-production & production plus any already incurred expenses. (e.g flights, props, equipment hire etc) less the estimated post-production costs.

12.3 A “Force Majeure Event” shall mean any matter or event beyond the Service Provider’s reasonable control. Without prejudice to the generality of the foregoing, the following shall be regarded as causes beyond the Service Provider’s reasonable control:

12.1.1 act of god, explosion, flood, tempest, pandemic virus or flu, fire or accident;

12.1.2 war or threat of war, sabotage, insurrection, civil disturbance or requisition;

12.1.3 acts, restrictions, regulations, byelaws, prohibitions or measures or any kind on the part of any governmental, parliamentary or local authority;

12.1.4 import or export regulations or embargoes;

12.1.5 strikes, lockouts or other industrial actions, power cuts or trade disputes (whether involving such party’s employees or of a third party); or

12.1.6 difficulties in obtaining labour, fuel, parts or machinery

13. Confidentiality Each party will keep confidential any proprietary and nonpublic information (“Confidential Information”) disclosed to it by the other party. Neither party (“Receiving Party”) will disclose any Confidential Information of the other party to any third party, save to such Receiving Party’s agents, subcontractors, advisers or employees who need to have access to such Confidential Information in order to perform any obligations of such Receiving Party under the Agreement, PROVIDED THAT the Receiving Party shall be responsible for ensuring that any person to whom it makes any such disclosure complies with this Clause 13 as if such

person were a party to this Agreement. The Receiving Party shall be responsible for any breach of the obligations of this Clause 13 by any person to whom such Receiving Party directly or indirectly discloses Confidential Information of the other party.

#### 14. Privacy

14.1 The parties acknowledge that the images of individuals appearing in videos and/or photographs produced as part of the Service will constitute personal data in terms of the Data Protection Act 1998 (“the Act”). In processing such personal data the Service Provider is a data processor in terms of the Act and such processing is at the behest of and under the direction of the Customer. The Customer hereby acknowledges its obligations as a data controller in terms of the Act and warrants and represents to the Service Provider that it has vismedia.agency Terms & Conditions discharged and shall discharge its obligations in terms thereof and the Customer shall hold the Service Provider harmless from any claims by any third party relating thereto.

14.2 Any personal data (as defined in the Act) provided by you to us shall at all times remain your property and we shall take all reasonable precautions to preserve the integrity of such Personal Data and to prevent any corruption or loss, damage or destruction of such Personal Data, PROVIDED THAT we reserve the right to disclose to the police, the fire authorities, any other relevant authority, our insurance company and any of their representatives details of the records kept by us, if we are permitted to do so without your consent under any applicable law, rule or regulation.

#### 15. IP rights and Ownership

15.1 Unless otherwise agreed in writing, all intellectual property rights arising out of this Agreement with respect to video shall vest in the Customer upon payment of the Contract Price. Unless otherwise agreed in writing, all intellectual property rights arising out of this Agreement with respect to photography shall vest in the Service Provider, as between the Customer and the Service Provider. Upon payment of the Contract Price, the Customer shall have a global, royalty-free licence in perpetuity to use that intellectual property for non-commercial purposes.

15.2 Nothing in this Agreement shall be taken to prevent us from using any knowhow acquired or developed during the performance of this Agreement in the provision of services to other parties.

15.3 Synchronisation use of track(s) from the Audio Network Production Music Library covers unlimited productions across online platforms with unlimited media spend, Pre-cleared for worldwide distribution, in perpetuity. This covers all productions distributed online. There is no limit on how much media spend (or promotional spend) you can put behind your online productions to promote them to a wider audience). Licence **exclusions** are commercials and long-form content distributed on TV, radio, cinema or streaming services. audio/music only productions. Please be aware that it is the Customer's responsibility to ensure that content that is forwarded to a third party is not going to be used for the excluded purposes above.

15.4 Stock Footage usage: Stock footage is sold with a single user license for a specific project with specific usage criteria and has to be repurchased for each new project. Please also be aware that it is the Customer's responsibility to ensure that content that is forwarded to a third party is not re-purposed into a newly created project or used outside of the originally stated usage criteria.

## 16. Dispute Resolution

16.1 In the event that controversy or claim arises under Clause 13, or the breach of same, either Party may without delay bring such matter to the English courts for resolution (a "Court Action").

16.2 In the event of any other controversy or claim arising out of or relating to this Agreement, or the breach of the same, the parties shall use their commercially reasonable efforts to settle the same through consultation and negotiation in good faith and a spirit of mutual cooperation.

16.3 In the event such dispute within clause 16.2 cannot be settled through consultation and negotiation within thirty (30) days of commencement of such consultation and negotiation or within such further period as the parties may agree in writing, the dispute shall be referred to and finally resolved by arbitration; provided that: (i) no arbitration proceeding shall be

commenced, or if already commenced, shall be stayed during the pendency of any Court vismedia.agency Terms & Conditions Action; and (ii) the arbitration Tribunal shall be bound by any and all facts found in any Court Action. CEDR shall be the appointing body and administer the arbitration. CEDR shall apply the UNCITRAL rules in force at the time of arbitration. The Parties shall mutually appoint a sole arbitrator to conduct arbitration proceedings and, failing that, CEDR shall appoint the arbitrator. The arbitration proceedings shall be held in the English language in London, England. Where a dispute, controversy or claim arises under Clause 13, or the breach of same, and also arises out of or in connection with any other matter, and where such a dispute cannot be efficaciously determined in the manner as otherwise provided in this subclause 16.3, and where a Court Action has been commenced, the English courts shall have primary jurisdiction.

## 17. Assignment, Subcontracting and Third Parties

17.1 Neither party shall assign, transfer, subcontract, or in any other manner make over to any third party the benefit and/or burden of this agreement without the prior written consent of the other, which consent shall not be unreasonably withheld or delayed; provided, however, that either party may upon notice to the other party assign this Agreement to a successor in interest or to a person controlled by, controlling or under common control with such assigning party.

17.2 For the purposes of the Contracts (Rights of Third Parties) Act 1999 the parties do not intend any person other than a party to the Agreement to be able to enforce any term of the Agreement (save where may be expressly stated otherwise in the Agreement).

## 18. Notices

18.1 Any notice or demand given or made under or in connection with the matters contemplated by this agreement shall be deemed to have been duly given and received:

18.1.1 If personally delivered, upon delivery at the address of the relevant party;

18.1.2 If sent by first class post, two business days after the date of posting; provided that if, in accordance with the above provision, any notice or demand would otherwise be deemed to be

given or made after 1700 hours, it shall be deemed to be given or made at the start of the next business day.

18.2 Any notice personally delivered or sent by first class post shall be delivered to the address of the relevant party set out in the Order Confirmation

## 19. General vismedia.agency Terms & Conditions

19.1 Failure or delay by either party in enforcing any term of the Agreement shall not be construed as a waiver of any of such party's rights under the Agreement.

19.2 The illegality, invalidity or unenforceability of any part of this Agreement will not affect the legality, validity or enforceability of the remainder.

19.3 The construction, validity and performance of this Agreement shall be governed by English Law and the parties submit themselves to the exclusive jurisdiction of the English Courts.