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| Dated  2016 |
| 1. UNIVERSITY OF LEEDS | | |
| Appointment of artist |
| for the provision of services  in connection with a permanent commission of public art for the  New NEXUS Building, Woodhouse Lane, Leeds LS2 |

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**THIS AGREEMENT** is made on the date set out in the Particulars

**BETWEEN**:

1. The University of Leeds of Leeds, LS2 9JT (the “Client”); and
2. [??] of [ address ] (the “Artist”).

**BACKGROUND**:

1. The Client intends to proceed with the Work.
2. The Client wishes to appoint the Artist to provide the Services in relation to the Work and on the terms and conditions set out in this Agreement.
3. The final design produced by the Artist shall be fabricated and installed by a manufacturer to be appointed by and be the responsibility of the Artist under the terms and conditions set out in this Agreement.

**IT IS NOW AGREED THAT**:

1. DEFINITIONS AND INTERPRETATION
   1. In this Agreement:

Unless the context otherwise requires the following words and expressions shall have the following meanings:

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| --- | --- | --- |
| **“Effective Date”** | **:** | [date] 2016 |
| **“Client’s Representative”** |  | [Nathalie Levi, email address: n.levi@leeds.ac.uk] or such other person as shall be appointed by the Client’s Librarian |
| **“Services”** | **:** | the services to be provided by the Artist as set out in Schedule 1 together with any Additional Services |
| **“Work”** | **:** | the artistic work to be produced by the Artist under this Agreement (including Documents and all other related materials) |
| **“Site”** | **:** | NEXUS Building, Leeds LS2 |
| **“Brief”** | **:** | the brief for the Work set out at Schedule 4 or otherwise notified by the Client and in each case as amended from time to time and approved by the Client |
| **“Fee”** | **:** | the fee (inclusive of all expenses and disbursements) of [?? thousand pounds] (£??,000+ any changeable VAT) to be paid in the instalments as set out in Schedule 2 |
| **“Budget”** | **:** | the budget agreed up to one hundred thousand pounds (£100,000+any changeable VAT) for the fabrication and installation of the Work at the Site |
| **“Interest Rate”** | **:** | three per cent (3%) per annum over the base rate of the Bank of England |
| **“Programme”** | **:** | the programme set out at Schedule 3 or otherwise notified by the Client and in each case as amended from time to time and approved by the Client |

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| **“Additional Services”** | any:   1. additional services that are not comprised in the Services; and/or 2. variations to the Services (including a suspension of any part of the Services),   that the Client requires the Artist to perform or cease to perform (as the case may be) in connection with the Work |
| **“Confidential Information”** | any information that ought to be considered confidential (however it is conveyed or on whatever media it is stored) and may include information whose disclosure would, or would be likely to, prejudice the commercial interests of any person, trade secrets, Intellectual Property and know-how of either Party and/or any third party and all personal data and sensitive personal data within the meaning of the Data Protection Act 1998 |
| **“Artist’s Proposal”** | a written proposal provided by the Artist to the Client in accordance with clause 3.2 |
| **“Documents”** | all drawings, designs, charts, specifications, plans and any other documents or materials (including any computer software developed by the Artist used to generate them and any designs contained in them), working papers and templates, which have been created and/or developed by the Artist in the course of performing its obligations under this Agreement |
| **“Intellectual Property”** | all copyright and all neighbouring and database rights and moral rights, registered designs, registered and unregistered design rights, or any rights or property similar to the foregoing in any part of the world whether registered or unregistered together with the right to apply for the registration of such rights in any part of the world and the rights to current applications for registration of any such intellectual property |
| **“Notice of Instruction”** | a notice in writing specifying any Additional Services that the Client instructs the Artist to perform in accordance with this Agreement |

1. ARTIST’S OBLIGATIONS

* 1. This Agreement shall commence on the Effective Date.
  2. The Artist shall provide the Services in accordance with this Agreement and with such reasonable written instructions (if any) as the Client may give to the Artist.
  3. The Artist shall meet the exact requirements of the Client and shall continue to exercise a high degree of skill and care as is to be expected of a properly qualified and competent artist experienced in carrying out services such as the Services in relation to projects of similar scope, size, nature, timescale and complexity and on a similar site or at a similar location to the Site.
  4. The Artist shall perform the Services, and carry out its duties and obligations under this Agreement:
     1. in co-operation with and without impediment to the Client or any other parties working on the Site and so as to comply with the requirements of the Client so that the Work shall be completed strictly;
     2. in accordance with the Programme;
     3. in accordance with all relevant legal requirements and any consent, licence, approval or authority of which the Artist is informed of or should be aware of;
     4. within the requirements of the Budget; and
     5. in accordance with the Brief.
  5. The Artist shall from time to time provide the Client with all such information and/or additional information and details in connection with the Work as the Client may from time to time require and as may be within the Artist’s knowledge.
  6. The Artist shall give notice to the Client as soon as the Artist becomes aware of any matter arising out of the performance by the Artist of the Services, or any other matter that may materially affect either the ability of the Artist to comply with his/her obligations in accordance with this Agreement or any interest of the Client regarding the Work, including causing:
     1. a variation to the scope of the Work;
     2. an increase in the cost of the Work or a change to its financial viability, quality or function; or
     3. a variation in the Programme.
  7. The notice the Artist shall give to the Client in accordance with clause 2.6 shall specify the cause(s) of the matters identified and the actions that the Artist believes are necessary to be taken as a result of such matters occurring.
  8. The Artist shall perform any Additional Services in relation to the Work that the Client may from time to time expressly instruct the Artist to perform in accordance with the provisions of clause 3.2. When performing any Additional Services the Artist shall use the same level of skill and care as she/he is required to exercise when performing the Services, as if the Additional Services were part of the Services and in accordance with the same duties and obligations as are set out in clause 2.4.
  9. Save in the case of an emergency which requires immediate action, no Additional Services shall be performed unless a Notice of Instruction has been received by the Artist from the Client.
  10. Where and to the extent that the Artist has already performed or partly performed any of the Services, the Artist warrants that:
      1. He has done so in accordance with the standards of reasonable skill and care and all other terms and conditions set out in this Agreement;
      2. all warranties and undertakings in this Agreement apply to the Artist;
      3. the Artist shall complete the performance of any part-performed Services in due time in accordance with this Agreement.

1. PAYMENT OF FEES AND BUDGET
   1. The Fee shall be payable for the Services by instalments as set out in Schedule 2.
   2. Where Additional Services are required the Client will notify the Artist of its proposal by issue of a Notice of Instruction identifying the nature and scope of the proposed Additional Services. Within 5 days of receipt of a Notice of Instruction or such a proposal from the Client, the Artist shall submit an Artist’s Proposal to the Client which shall state:
      1. any adjustment that may be required to the Fee as a result of the Artist performing the Additional Services;
      2. the effect (if any) of such Additional Services on the Programme; and
      3. the effect (if any) of such Additional Services on the Budget.
   3. Following receipt of the Artist’s Proposal by the Client:
      1. the Parties shall use all reasonable endeavours to agree any adjustment to the Fee and the instalments by which it is to be paid; and
      2. where the Artist’s Proposal is in response to the Client’s proposal to issue a Notice of Instruction the Client shall either issue a Notice of Instruction or confirm that it does not intend to do so.
   4. If the Parties are unable to agree any adjustment to the Fee and/or the instalments by which the Artist is to be paid, then the Additional Services will not be required and the Client may engage its step in rights as detailed under clause 9.7.
   5. In particular neither the Fee nor Budget shall not be increased:
      1. if the Artist has not complied with the requirements of clauses 3.2 to 3.4; or
      2. where and to the extent any Additional Services have been necessitated due to the negligence, omission or default on the part of the Artist.
   6. The proposed Budget shall be submitted by the Artist as part of milestone 2, being the Detailed Design Submission. The commitment to pay shall only commence once the Budget has been approved by the Client’s Representative.
   7. The Artist shall remain responsible for non-performance of and payments to any contractors he has involved in the fabrication and instalment of the Work. If the costs allocated under the Budget are exceeded this shall be for the Artist’s account. No further amounts maybe paid by the Client.
   8. The Schedule of payments to be made by the Client to the Artist will be as detailed under the agreed Budget. No payments will be made without proof of expenditure requiring disclosure of contractor’s invoice detailing price, services and materials delivered. The Artist will provide such other proof as reasonably required by the Client to demonstrate legitimate expenses have been incurred against goods and services delivered.
   9. The Artist shall ensure that any agreements it has entered into for the fabrication and installation of the Work can be assigned for the benefit of the Client and that the Client may require the contractors to deliver their goods/services as if they were the Artist.
   10. The Artist shall not receive from any contractor involved in the fabrication or installation of the Works any benefit whether by commission, gift or otherwise.
   11. If the true cost of fabrication and installation has been lower than anticipated under the agreed Budget then for the avoidance of doubt the Client shall only be liable for the amount of expenditure actually incurred.
   12. All invoices sent to the Client for payment shall be invoices in the name of the Artist. The Client shall not be required to make payment to the Artist’s contractors, that shall be the exclusive responsibility of the Artist.
   13. For the avoidance of doubt if the Artist does not achieve the milestones for delivery described under the Programme in accordance with the approval dates detailed under Schedule 3 then the Artist may not receive payment as described under Schedule 2 or under the Budget.

1. COPYRIGHT, MORAL RIGHTS, ATTRIBUTION AND ACKNOWLEDGEMENT

## 4.1 The Client acknowledges that the Artist's rights pursuant to Chapter IV (Moral Rights) of Part 1 of the Copyright, Designs and Patents Act 1988 in relation to the Work or any part thereof or to any Documents shall remain vested in the Artist. After the Artist's death the provisions of this clause shall operate for the benefit of the personal representatives of the Artist or other persons to whom the Artist's "moral rights" are properly passed under the application legislation.

## 4.2 The Artist may with the agreement of the Client’s Representative:

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### 4.2.1. make or authorise the making of, any photograph or drawing of the Work; and

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### 4.2.2. authorise such photos or drawings of the Work to be included in any publication or film, video or television broadcast in association with information about the Work’s creation for the Client.

4.3 The Client shall own the Work in its entirety. Such ownership shall for the avoidance of doubt include ownership of all Intellectual Property rights and the physical materials of the Work. These ownership rights shall commence from the Effective Date. As owner of the Work the Client is free to photograph and produce publicity relating to the Work.

## 4.4 The Client will at all relevant times and with reasonable endeavours acknowledge and identify the Artist as the creator of the Work including all occasions on which the Work (including any drawings, designs, maquettes or models) are exhibited in public or copies or photograph(s) of it are issued to the public.

4.5 The Artist will use reasonable endeavours to ensure that the Client is credited whenever the Work features either as an illustration or within written text in any future publication. In the case of media interview, public lectures or prize nominations (or other such instances) in which the Work is featured, the Artist will, similarly, use reasonable endeavours to credit the Client. Likewise, the Client will use reasonable endeavours to ensure that the Artist is credited, whenever the Client makes public mention or a photograph of the Work is reproduced.

4.6 The Client agrees to maintain on permanent file a record of this Agreement and of the location of the Work. The Client may alter the location of the Work without informing the Artist. If any alteration or modification of the Work takes place after completion and whether intentional or accidental and whether done by the Client or others, the Work shall no longer be represented as the Work of the Artist unless the Artist consents in writing. For the avoidance of doubt, such alternation or modification within the meaning of this clause 4.6 does not include routine maintenance and repair of the Work.

4.8 The Artist agrees and shall obtain a written waiver from its employees and/or, members and/or partners from time to time of any rights which they may have in relation to the same to the extent that if it is necessary or appropriate to amend the design in the Documents (which may, for the avoidance of doubt, extend to removal of the Work from the Site) to comply with any Legal Requirements, where such design is or might be a danger to health and safety, where such design is not fit for purpose or is not otherwise practical for or appropriate to the Work. In making any such amendment the Client shall consult with the Artist and shall have regard to any reasonable views of the Artist in relation thereto. For the avoidance of doubt, it is not intended that the Client's entitlement to amend the design pursuant to this provision will extend to a right to do so solely for aesthetic reasons.

4.9 To the extent permissible by law, the Client's liability under or in connection with any breach of the Artist's moral rights in the Work shall be subject to an aggregate cap of an amount equal to 50% of the fee payable to the Artist. For the avoidance of doubt, the circumstances set out in Clause 4.6 shall not constitute a breach of the Artist's moral rights.

4.10 The Artist shall not grant to any third party the right to use any of the Documents.

4.11 The Artist shall not be liable for any use the Client may make of the Documents for any purpose other than that for which they were prepared and the purposes set out in clause 4.11.

4.12 The Artist warrants that:

4.12.1 the Work is the Artist’s own original work and the Work does not infringe the rights of any third party;

4.12.2 the Work contains nothing which is obscene, indecent, defamatory, libellous or unlawful; and

4.12.3 the Artist has not and will not enter into any other agreement that would restrict in any way his ability to perform his obligations under this Agreement.

4.13 The Artist agrees on reasonable request at any time and following reasonable prior notice to give to the Client, or those authorised by the Client, access to the Documents and to provide copies (including electronic copies in a readable form) of the Documents. The Client reserves the right to alter or delete any part of any of the Documents but any such alteration or deletion shall not discharge the Artist’s liability under this **clause 4**.

4.15 The Artist grants to the Client the right to use the Artist’s name in connection with the purposes contemplated by this Agreement.

4.16 The Artist shall indemnify the Client against all and any loss, damages, expenses or costs incurred by the Client (including costs and expenses arising out of or compromising or settling any claim) arising out of any breach by the Artist of any of this **clause 4** or out of any claim by a third party based on any facts which, if substantiated, would constitute such a breach and, at the request of the Client, she/he shall provide all reasonable assistance to enable the Client to resist any claim, action or proceedings brought against the Client as a consequence of that breach.

1. TAX AND NATIONAL INSURANCE
   1. The Artist warrants that he is recognised by H M Revenue & Customs to be a self-employed person. He is engaged under this Agreement in a self-employed capacity, and fees and expenses payable to him under this Agreement shall be paid gross, if appropriate, and without deduction of income tax or social security contributions.
   2. The Artist agrees to indemnify the Client against any liability which the Client incurs because of the non-deduction of, or failure to account for, any tax and national insurance contributions (or the like in any relevant jurisdiction) relating to the Artist’s remuneration under this Agreement other than to the extent arising from the wilful default or negligence of the Client.

1. APPROVALS

* 1. The Artist shall obtain the Client's prior written approval before:
     1. making or permitting any change in the designs and/or specifications for the Work after they have been approved by the Client;
     2. doing anything which shall or might reasonably be expected to increase materially the Budget or the cost of the Work or affect the progress of or the scheduled completion date for the Work in relation to the Programme.
  2. No approvals, comments, instructions, consents or advice or indication of satisfaction given by or from the Client nor any enquiry or inspection which the Client may make or have carried out for its benefit or on its behalf shall operate to reduce, extinguish, exclude, limit or modify the Artist’s obligation to fulfil its duties and obligations under this Agreement unless it is in writing, refers to this Agreement and clearly identifies the duty or obligation and the extent to which such duty or obligation is to be reduced, extinguished, excluded, limited or modified and is signed by an authorised representative of the Client.

1. ASSIGNMENT AND SUB-CONTRACTING 
   1. The Client may, without the consent of the Artist, assign the benefit of and its benefits and rights under this Agreement to any person by way of absolute legal assignment, on not more than two occasions and afterwards only with the consent of the Artist (not to be unreasonably withheld or delayed).
   2. The Artist may not assign, sub-contract or otherwise transfer the whole or any part of the benefit of, or any of its rights or obligations and/or delegate or sub-contract the whole or any part of its duties under, this Agreement without the Client’s prior written consent, such consent to be given or withheld at the Client’s absolute discretion.

1. CONFIDENTIALITY
   1. The Artist shall not, without the Client’s prior approval, disclose to any other person any Confidential Information and the Artist must not exploit any such Confidential Information for his own benefit or the benefit of any other person.
   2. The Artist’s obligations in clause 8.1 do not apply to any information which:
      1. is already in the public domain;
      2. came to the Artist otherwise than in connection with the Artist’s involvement in the Work;
      3. is required to be disclosed by law;
      4. is disclosed to the Artist’s advisers; or
      5. must be disclosed to enable the Artist to fulfil his/her duties under this Agreement and to his/her advisers, save that in relation to clauses 8.2.1 and 8.2.2, such disclosure must not have resulted as a breach by the Artist of any contractual obligation under this Agreement.
   3. The Artist shall take all reasonable steps to ensure that his employees, agents, sub-consultants and sub-contractors are bound by the confidentiality obligations in this clause 8.

1. TERMINATION
   1. In addition to any other rights and remedies which the Client may have, the Client may at any time by notice to the Artist immediately terminate the whole or any part of the Artist’s engagement in relation to the Work.
   2. If the Client is in material and persistent breach of its obligations under this Agreement and fails to remedy the same after receiving a 30 day notice from the Artist specifying the breach and requiring its remedy then the Artist shall be entitled by notice to the Client immediately to terminate its engagement in connection with the Work.
   3. The Client may by notice to the Artist suspend all or any of the Artist’s duties under this Agreement. If such notice is given and the Client has not within six months requested the Artist to resume the duties suspended, the Artist may serve 30 days’ notice on the Client requiring it to end the suspension. If the Client has not notified the Artist within that 30 day period that the suspension is ended the Artist may immediately by notice to the Client terminate his engagement in connection with the Work.
   4. Upon any suspension or termination under this clause 9 and/or termination under clause 13.2 the Client shall pay the Artist:
      1. any instalments of the Fee and other sums which have become due to the Artist prior to the date of such suspension or termination and which remain unpaid; and
      2. a fair and reasonable proportion of the next following instalment of the Fee commensurate with the Services which the Artist has performed up to the date of such suspension or termination, less any amounts previously paid by the Client to the Artist for the period up to the date of suspension or termination.
   5. Upon any suspension or termination under this clause 9 and/or termination under **clause 13.2** the Artist shall not be entitled to any sums in respect of loss of anticipated profit, loss of contracts or any other losses and expenses arising by reason of or in connection with such suspension or termination. Subject to this, termination of the Artist’s engagement, however it arises, shall be without prejudice to the rights and remedies of either Party in relation to any negligence, omission or default of the other prior to such termination.
   6. Following any termination of the Artist’s engagement however it arises the Artist shall immediately take all necessary steps to end, in an orderly manner, the provision by him/her of the Services, such steps to be taken with all reasonable speed and economy. The Artist shall also deliver to the Client the Work as developed/completed upto termination.
   7. Without prejudice to the above rights if the Client believes that the Artist is not making sufficient progress or achieving the required levels of service then it may serve written notice upon the Artist. Such notice to give the Artist at least 14 days to correct the identified issues. If the issues have not been corrected to the satisfaction of the Client then the Client may terminate this Agreement and either itself or through a third party contractor complete the production and installation of the Work. The Artist will be given a fair attribution as author of the Work under such circumstances. Such attribution would be proportionate to the Artist’s contribution to the development and installation of the Work.
   8. Upon termination the following clauses shall continue and survive indefinitely, 2.10, 3.7, all parts of clauses 4, 9 and 14.

1. NOTICES
   1. Any written notice, approval or consent is to be sent by email. The email from or to the Client shall be through the Client’s Representative. Emails shall be deemed served upon transmission report showing time sent.

1. ENTIRE UNDERSTANDING
   1. This Agreement constitutes the entire agreement between the Parties and supersedes any prior agreement or arrangements in respect of its subject matter and:
      1. neither Party has entered into this Agreement in reliance upon, and it shall have no remedy in respect of, any representation or statement (whether made by the other Party or any other person) which is not expressly set out in this Agreement; and
      2. no amendment or modification of this Agreement shall be valid or binding on either Party unless the same is made in writing and refers expressly to this Agreement and is signed by the Parties concerned or their duly authorised representatives.
   2. Nothing in this clause 11 shall be interpreted or construed as limiting or excluding the liability of either Party for fraud or fraudulent misrepresentation.

1. THIRD PARTY RIGHTS 
   1. The Parties do not intend that any term of this Agreement shall be enforceable under the Contracts (Rights of Third Parties) Act 1999 by any person other than the Parties.

1. ANTI-CORRUPTION

* 1. The Artist shall:
     1. not commit any act or omission which causes or could cause it or the Client to breach, or commit an offence under, any laws relating to anti-bribery and/or anti-corruption;
     2. keep accurate and up to date records showing all payments made and received and all other advantages given and received by it in connection with this Agreement and the steps it takes to comply with this clause 13.1, and permit the Client to inspect those records as reasonably required;
     3. promptly notify the Client of:
        1. any request or demand for any financial or other advantage received by it; and
        2. any financial or other advantage it gives or intends to give

whether directly or indirectly in connection with this Agreement; and promptly notify the Client of any breach of this clause 13.1 by itself.

* 1. The Client may terminate this Agreement immediately by givingwritten notice to that effect to the Artist if the Artist is in breach of clause 13.1. Following such termination, the provisions of **clauses 9.4** to **9.6** shall apply.

1. GOVERNING LAW AND JURISDICTION
   1. This Agreement and any non-contractual obligations arising out of or in connection with it shall be governed by English Law.
   2. The Parties agree that the courts of England and Wales shall have exclusive jurisdiction to determine any dispute arising out of or in connection with this Agreement (including (without limitation) in relation to any non-contractual obligations). The Parties irrevocably submit to the jurisdiction of those courts.**SIGNED BY** or on behalf of the parties on the date stated at the beginning of this Agreement.

Signed by **[NAME OF ARTIST]** )

Signature of individual

Signed by )

**ROGER GAIR** )

for and on behalf of )

**UNIVERSITY OF LEEDS** )

Signature of officer

1. 1 SCHEDULE

The Services

1. Submit to the Client in writing all information requests necessary for the performance of the Services.
2. Develop within the Budget, the requirements of the Site and the Brief and provide or procure the provision of (so far as within the Artist’s power) all necessary and relevant designs, documents, reports, notes, drawings, models, CAD (computer assisted design) visualisations, plans, specifications, costings, and other materials so as to enable:-
   1. [the manufacturer and the Client’s structural engineer] to comply with their obligations to the Client; and
   2. the Work to be created, designed, and fabricated
   3. the Work to be installed on the Site.
3. Develop additional design proposals and provide such other services as reasonably required by the Client in respect of the subject matter of this Agreement.
4. Take all reasonable action to facilitate the creation, design, fabrication and installation of the Work in accordance with the Programme.
5. Supervise the fabrication and installation of the Work.
6. Make periodic visits to the Client [, the manufacturer and the Client’s structural engineer, as appropriate,] at the reasonable request of the Client [, the manufacturer and the Client’s structural engineer, as appropriate].
7. Participate in the following functions and meetings:-
   1. planning consent meetings;
   2. press launch; and
   3. opening ceremony.
8. Supply biographical and other material for promotional purposes (including information packs) of the Client in respect of the Work.
9. Assist with the preparation of reports by the provision of information.
10. Provide information each month to the Client’s Representative on progress and generally such other reasonable assistance as the Client shall request.
11. SCHEDULE

The Fee

Artist’s Fee £??,000

Fee payments will be made when a milestone is achieved and approved by the Client (see Schedule 3). The three milestones are as follows:

Milestone 1 Concept Proposal Approved £?,000 end of ?? 201?

Milestone 2 Detailed Design Submission Approved £??,000 end of ?? 201?

Milestone 3 Installation of Work £?,000 end of ?? 201?

2. 3 SCHEDULE

The Programme

**Approval and requirements to achieve milestones:**

MILESTONE 1: Concept presentation

(Approval by end ?? 201?) Presentation to the Client’s panel of concept, including visuals (possibly including digital/physical 3D models) and accompanying explanatory text (possibly in report format) – Approval by Panel communicated by Client’s Representative.

MILESTONE 2: Detailed Design

(Approval by end of ?? 201?) Presentation to the Client’s panel of detailed design, which should demonstrate feasibility of design and indicative planning approval, as well as include a Budget with the fixed costs and projected payment regime for fabrication/installation - Approval by Panel communicated by Client’s Representative.

MILESTONE 3: Installation

(Approval by end ?? 201?) Artwork completed and installed on site, with provision of Documentation (possibly sharing photos/videos of production) - Approval by Panel communicated by Client’s Representative.

1. 4 SCHEDULE