

CONSULTANCY AGREEMENT WITH COMPANY

THIS AGREEMENT is dated

2017

PARTIES

- (1) **HULL UK CITY OF CULTURE 2017 LIMITED** incorporated and registered in England and Wales with company number 09106231 whose registered office is at Pacific Exchange, 40 High Street, Hull, HU1 1PS ("**Hull 2017**"); and
- (2) **AESTHETICA MAGAZINE LIMITED** incorporated and registered in England and Wales with company number 06025418 whose registered office is at 10 Toft Green, York, YO1 6JT (the "**Consultant**").

BACKGROUND

Each of Hull 2017 and the Consultant wish to confirm the terms concerning the provision of the Consultant's services to Hull 2017 in accordance with the terms of this agreement.

AGREED TERMS

1. **TERM**

The Consultant shall provide the services set out in Schedule 1 (the "**Services**") to Hull 2017 on the dates set out in Schedule 1 unless and until this agreement is terminated in accordance with the terms of this Agreement.

2. **SERVICES**

- 2.1. The Consultant shall be required to provide the Services at the times set out in Schedule 1. The Consultant shall use best endeavours to promote the interests of Hull 2017 when carrying out the Services and time shall be of the essence with respect to the agreed timescales.
- 2.2. The Consultant warrants undertakes and agrees with Hull 2017 that:
 - 2.2.1. the Consultant is free to enter into this agreement and supply the Services and is not under any pre-existing obligation which would prevent or hinder supply of the same;
 - 2.2.2. the Consultant shall render the Services to the best of the Consultant's skill and ability in a professional and workmanlike manner at such locations and times and in co-operation with such persons as Hull 2017 may from time to time direct;
 - 2.2.3. the Consultant shall not in connection with any activities under this agreement do or suggest the doing of any action which might be unlawful or infringe the rights of any third party or which might prejudice or damage the reputation of Hull 2017;
 - 2.2.4. no literary, dramatic, musical or artistic work or film, sound recording or broadcast made by the Consultant (whether alone or jointly with others) as part of the Services shall under the laws in force in the UK be obscene or defamatory or offensive to religion or blasphemous or infringe any right of copyright, performers' property rights, moral rights, right of privacy, right of publicity or any other right whatsoever of any person and all such

works, films, sound recording or broadcast shall comply in all respects with the law;

- 2.2.5. except to the extent that any copyright work created by the Consultant during the rendering of Services is made by the Consultant jointly with any employee or any other freelancer under the appointment of Hull 2017 the Consultant shall be the sole absolute and unencumbered legal and beneficial owner of all rights in and to such copyright work and the Consultant warrants that he/she has the right to grant to Hull 2017 the rights granted in clause 7 of this agreement; and
- 2.2.6. any literary, dramatic, musical or artistic work or film sound recording or broadcast made by the Consultant (whether alone or jointly with others) as part of the Services shall comply in all respects with the provisions of all relevant Codes of Practice and Professional Standards of Hull 2017 which have been notified to the Consultant and shall comply with Hull 2017's house rules and style requirements.
- 2.3. If the Consultant is unable to provide the Services due to illness or injury the Consultant shall notify Hull 2017's Business Director or such other person as shall be notified to the Consultant by Hull 2017 as soon as reasonably practicable.
- 2.4. The Consultant must comply with Hull 2017's anti-corruption and bribery policy and procedures and the Bribery Act 2010. Failure to do so may result in the immediate termination of this Agreement.
- 2.5. The Consultant shall be available at all times on reasonable notice to provide such assistance or information as Hull 2017 may require.
- 2.6. The Consultant has no authority (and shall not hold him/herself out as having authority) to bind Hull 2017, unless Hull 2017 has specifically permitted this in writing in advance.
- 2.7. This Clause 2.8 applies where the Consultant provides individuals to Hull 2017 in the performance of the Consultant's obligations pursuant to this Agreement (the "**Individuals**"). The Consultant agrees to ensure that the Individuals shall:
 - 2.7.1. supply the Services with all due care, skill and diligence;
 - 2.7.2. use their best endeavours to promote the best interests of Hull 2017;
 - 2.7.3. understand that they shall not have authority and shall not hold themselves out as having authority to bind Hull 2017 except where they are specifically authorised to do so by Hull 2017 in writing;
 - 2.7.4. have satisfied any employment and reference checks as reasonably required by Hull 2017;
 - 2.7.5. where required by Hull 2017 shall comply with Hull 2017's procedures and rules from time to time in place;
 - 2.7.6. where the Individual is unable to perform the Services due to illness or injury, the Consultant shall immediately notify Hull 2017 of the fact and shall use its reasonable endeavours to identify a suitably skilled and qualified Individual to perform the Services during such absences and shall offer such Individual to Hull 2017 as a replacement; and

2.7.7. comply with Clauses 2,3,5 and 7 of this Agreement.

3. **FEE AND EXPENSES**

- 3.1. Hull 2017 will pay a Fee to the Consultant in accordance with Schedule 1 (the "Fee"). Hull 2017 shall pay the Fee to the Consultant within 30 (thirty) days of receipt by Hull 2017 of a correctly completed invoice and all payments shall be made in accordance with the account details specified on such invoice.
- 3.2. The Consultant shall not incur any expenses or costs on behalf of Hull 2017 without Hull 2017's prior written consent. Hull 2017 shall reimburse those expenses agreed in advance as necessary for the proper performance of the Services within thirty (30) days of receipt of the Consultant's invoice and all relevant receipts.
- 3.3. Hull 2017 is entitled to deduct from any sums payable to the Consultant any sums that the Consultant may owe Hull 2017 at any time.

4. **OTHER ACTIVITIES**

The Consultant may be engaged, employed or concerned in any other business, trade, profession or other activity which does not place the Consultant in a conflict of interest with Hull 2017. However, the Consultant may not be involved in any capacity with a business which does or could compete with the business of Hull 2017 without the prior written consent of an authorised representative of Hull 2017.

5. **CONFIDENTIAL INFORMATION AND HULL 2017 PROPERTY**

- 5.1. The Consultant shall not and shall procure that any individuals provided by it to Hull 2017 and that any subcontractor of the Consultant shall not (except as provided in this Clause or as may be necessary in the course of performance of this Agreement) use or disclose to any person either during or at any time after the Consultant's engagement by Hull 2017 any confidential information about the business or affairs of Hull 2017 or about any other confidential matters which may come to the Consultant's knowledge in the course of providing the Services. For the purposes of this clause 5, confidential information means any information or matter which is not in the public domain and which relates to the affairs of Hull 2017 or any of its business contacts.
- 5.2. The restriction in clause 5.1 does not apply to:
- 5.2.1. any use or disclosure authorised by Hull 2017 or as required by law; or
- 5.2.2. any information which is already in, or comes into, the public domain otherwise than through the Consultant's unauthorised disclosure.
- 5.3. All documents, manuals, hardware and software provided for the Consultant's use by Hull 2017, and any data or documents (including copies) produced, maintained or stored on Hull 2017's computer systems or other electronic equipment (including mobile phones if provided by Hull 2017), remain the property of Hull 2017.
- 5.4. The Consultant may not include in the Consultant's marketing materials or portfolio or otherwise disclose details of or show the products of the Consultant's Services (including any deliverables) to any third party without the prior written consent of Hull 2017.

6. DATA PROTECTION

- 6.1. The Consultant consents to Hull 2017 holding and processing data relating to the Consultant for legal, personnel, administrative and management purposes and in particular to the processing of any "sensitive personal data" as defined in the Data Protection Act 1998 relating to the Consultant.
- 6.2. The Consultant consents to Hull 2017 making such information available to those who provide products or services to Hull 2017 (such as advisers), regulatory authorities, governmental or quasi-governmental organisations.
- 6.3. The Consultant irrevocably consents to the transfer of such information to Hull 2017's business contacts outside the European Economic Area in order to further its business interests.

7. INTELLECTUAL PROPERTY

- 7.1. The Consultant hereby assigns to Hull 2017:
 - 7.1.1. all existing and future intellectual property rights including, without limitation patents, copyright and related rights including rental and lending rights and all performer's property rights and all rights of action and all other rights of whatever nature in and to the product of the Services whether now known or in the future created to which the Consultant is now or may be at any time after the date of this Agreement entitled by virtue of any laws in force in any part of the world to hold to Hull 2017, its successors and licensees absolutely (and in the case of copyright for the full period of copyright throughout the world including all renewals, revivals, reversions and extensions). For the avoidance of doubt this assignment includes any and all intellectual property rights arising out of the Services the individual has provided to Hull 2017 prior to the date of this Agreement; and
 - 7.1.2. all inventions arising from the Services;
- 7.2. The Consultant hereby irrevocably waives all moral rights under the Copyright, Designs and Patents Act 1988 (and all similar rights in other jurisdictions) which the Consultant has or will have in any existing or future works.
- 7.3. The Consultant agrees promptly to execute all documents and do all acts as may, in the opinion of Hull 2017, be necessary to give effect to this clause 7 including procuring that any individuals provided by it to Hull 2017 and that any subcontractor of the Consultant shall assign his/her/its rights, title and interest (including any Intellectual Property Rights) in the product to the Services in the form set out in Schedule 2. The Consultant hereby irrevocably appoints Hull 2017 to be the Consultant's attorney to execute and do any such instrument or thing and generally to use the Consultant's name for the purpose of giving Hull 2017 or its nominee the benefit of this clause 8 and acknowledges in favour of a third party that a certificate in writing signed by any director or the secretary of Hull 2017 that any instrument or act falls within the authority conferred by this clause 7 shall be conclusive evidence that such is the case.
- 7.4. The Consultant confirms and agrees that to the extent the Services result in the creation of any typographical arrangement of a published edition or film or sound recording or broadcast (as such expressions are defined in the Copyright, Designs and Patents Act 1988) all rights in such material shall belong to Hull 2017 as sole

absolute legal and beneficial owner absolutely from the moment of creation and such material shall be treated in all respects as if Hull 2017 were the author and first owner of such material pursuant to Sections 9(2) and 11(2) of such Act.

8. **INSURANCE AND LIABILITY**

- 8.1. The Consultant shall have personal liability for and shall indemnify Hull 2017 for any loss, liability, costs (including reasonable legal costs), damages or expenses arising from any breach by the Consultant of the terms of this Agreement, including any negligent or reckless act, omission or default in the provision of the Services and shall maintain in force during the term adequate insurance cover with reputable insurers acceptable to Hull 2017.
- 8.2. The Consultant shall indemnify Hull 2017 against any losses suffered by Hull 2017 as a result of any claim or threatened claim that the Services infringe the intellectual property rights of any third party.
- 8.3. Hull 2017's liability in respect of this Agreement shall be limited to the lesser of the amount of fees paid to the Consultant pursuant to this Agreement during the Consultant's engagement or over the twelve month period prior to which such liability arose.
- 8.4. Nothing in this Agreement excludes or limits Hull 2017's liability in respect of death or personal injury caused by the negligence of Hull 2017.

9. **TERMINATION**

Hull 2017 may at any time terminate the Consultant's engagement with immediate effect with no liability to make any further payment to the Consultant (other than in respect of any accrued fees or approved expenses at the date of termination) if:

- 9.1.1. the Consultant or any of the individuals employed or engaged by the Consultant to supply the Services is in material breach of any of the Consultant's obligations under this Agreement; or
- 9.1.2. other than as a result of illness or accident, after notice in writing, the Consultant wilfully neglects to provide or fails to remedy any default in providing the Services.
- 9.1.3. a Consultant Insolvency Event occurs (a Consultant Insolvency Event means any of the following occurring in respect of the Consultant: (i) the Consultant (being a company), passes a resolution for winding up (otherwise than for the purposes of an amalgamation or reconstruction) or a court makes an order to that effect; or (ii) the Consultant (being a partnership or other unincorporated association) is dissolved; or (iii) the Consultant has a liquidator, receiver, administrator, administrative receiver, manager, trustee or similar officer appointed over any of its assets; or (iv) the Consultant becomes or is declared insolvent or convenes a meeting of or makes or proposes to make any arrangement or composition with its creditors; or (v) the Consultant ceases or threatens to cease to carry on business);
- 9.1.4. the Consultant is in a position of actual or potential conflict of interest (as determined by Hull 2017) as a result of its activities, undertakings or interests or where approved by or notified to the Company such conflict arises after the date of its notification or approval by the Company;

- 9.1.5. the Consultant provides a replacement in accordance with clause 2.8.6 which Hull 2017 does not consider to be suitably skilled or otherwise appropriate for carrying out the Services on behalf of Hull 2017;

Any delay by Hull 2017 in exercising its rights to terminate shall not constitute a waiver of those rights.

10. **OBLIGATIONS ON TERMINATION**

Any Hull 2017 property in the Consultant's possession and any original or copy documents obtained by the Consultant in the course of providing the Services shall be returned to Hull 2017 at any time on request and in any event on the termination of this Agreement. The Consultant also undertakes to irretrievably delete any information relating to the business of Hull 2017 stored on any magnetic or optical disk or memory, and all matter derived from such sources which is in the Consultant's possession or under the Consultant's control outside the premises of Hull 2017.

11. **STATUS**

- 11.1. Nothing contained in this Agreement shall constitute a partnership or contract of employment between the Consultant and Hull 2017. The Consultant will be an independent contractor and nothing in this Agreement shall render the Consultant an employee, worker, agent or partner of Hull 2017 and the Consultant shall not hold him/herself out as such.

- 11.2. The Consultant shall be fully responsible for and indemnify Hull 2017 against any liability, assessment or claim for:

11.2.1. taxation whatsoever arising from or made in connection with the performance of the Services, where such recovery is not prohibited by law; and

11.2.2. any employment-related claim or any claim based on worker status (including reasonable costs and expenses) brought by the Consultant or any substitute against Hull 2017 arising out of or in connection with the provision of the Services, except where such claim is as a result of any act or omission of Hull 2017.

Hull 2017 may satisfy such indemnity (in whole or in part) by way of deduction from any payment due to the Consultant.

12. **NOTICES**

- 12.1. Any notice or other communication required to be given to a party under or in connection with this Agreement shall be in writing and shall be delivered by hand or sent by pre-paid first-class post or other next working day delivery service, at its registered office (if a company) or (if an individual), their home address or sent by email to the email addresses notified by the respective parties from time to time.

- 12.2. Any notice or communication shall be deemed to have been received if delivered by hand, on signature of a delivery receipt or if sent by email, at 9:00 am on the next working day after transmission, or otherwise at 9:00 am on the second working day after posting.

13. **VARIATION AND THIRD PARTY RIGHTS**

- 13.1. This Agreement may only be varied by a document signed by both the Consultant and Hull 2017.
- 13.2. The Contracts (Rights of Third Parties) Act 1999 shall not apply to this Agreement and no person other than the Consultant and Hull 2017 shall have any rights under it. The terms of this Agreement or any of them may be varied, amended or modified or this Agreement may be suspended, cancelled or terminated by agreement in writing between the parties or this Agreement may be rescinded (in each case), without the consent of any third party.

14. **INVALIDITY**

If at any time any term or provision in this Agreement shall be held to be illegal, invalid or unenforceable, in whole or in part under any rule of law or enactment, such term or provision or part shall to that extent be deemed not to form part of this Agreement, but the enforceability of the remainder of this Agreement shall not be affected.

15. **GOVERNING LAW AND JURISDICTION**

- 15.1. This Agreement and any dispute or claim arising out of or in connection with it shall be governed by and construed in accordance with English law.
- 15.2. The courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of this Agreement.

Signed by Will Hutchinson (General Counsel) for and on behalf
of **Hull UK City of Culture 2017 Limited**

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Signed by Fran Hegyi (Executive Director) for and on behalf
of **Hull UK City of Culture 2017 Limited**

.....
Signed for and on behalf
of **Aesthetica Magazine Limited**

Cherie Federico, Director, 13 October 2017..... *Cherie Federico 13/10/2017*

SCHEDULE 1

THE FEE

Hull 2017 shall pay the Consultant a fee of £9,500 exclusive of VAT (the “Fee”).

A breakdown of the Fee is detailed below:

Project Management	5 days @ £400 = £2000
Programming	10 days @ £250 = £2500
Licencing and screening rights	16 films @ £100 = £1600
Speakers’ Fees	16 @ £100 = £1600
Administration	4 days @ £100 = £400
Speaker Travel and Accommodation	£800
Technical - making DCPs	£600
	Total = £9,500

THE SERVICES

The Consultant shall provide the personal consultancy services of Cherie Frederico, and such other individuals as may be required for the Consultant to perform the Services, to Hull 2017 as required and as agreed with the Consultant as part of the Substance project (detailed below).

Project: Aesthetica Film Festival (working title as part of Substance Festival from 29 November to 10 December 2017)

Working in partnership with Hull 2017 and Hull Independent Cinema (HIC), the Consultant will curate four programmes of films that look at new northern talent and the screenings will celebrate the next generation of filmmaking talent. We will push boundaries and ask key questions such as “what does it mean to be northern?” In a globalised world what are the parameters of regional identities?

The screenings will also be accompanied with a panel discussion around these key themes to extend audiences’ understanding of the films and the wider context of northern European post-industrialised cities.

Project management, curation and technical delivery will be carried out by the Consultant’s staff along with marketing support for the event from the Aesthetica Short Film Festival (“ASFF”) and the Consultant.

Possible Programme Titles (all subject to change once programming begins):

- Northern Influence: A Source of Inspiration
- Identity and the Future: Beyond the Clichés
- Award-Winning Northern Voices (this would be a showcase of award-winning films)
- The Impact of Place

Marketing Support in Kind from ASFF and the Consultant

- Series of tweets and Facebook posts - 250,000 followers on all sites
- Blog editorial - 107,000 reads per month
- Inclusion of programme materials in ASFF goody bags - to VIPs
- Inclusion of programme materials in ASFF Hub
- Attend a networking event or host a drinks reception