**HULL 2017 COMMISSIONING AND PRODUCTION AGREEMENT**

**THIS AGREEMENT** is made on 2016

**BETWEEN**

1. **HULL UK CITY OF CULTURE 2017 LIMITED** a company incorporated in England and Wales under company number 9106231 (with registered charity number 1162199) whose registered office is at 40 High Street, Pacific Exchange, Hull, HU1 1PS(“**Hull 2017”**); and
2. **[Luke Bainbridge]**, a company incorporated in England and Wales under company number [♦] whose [registered office / principal place of business] is at [♦] (the “**Producer”**).

**BACKGROUND**

Hull 2017 is organising City of Culture and Hull 2017 and Producer wish to enter into an agreement pursuant to which the Producer shall create the Commissioned Work and produce the Production as part of City of Culture, and consisting of (i) Section 1 (General Clauses) and (ii) Section 2 (Contribution).

DOCUMENTATION

The following documents referred to in this Agreement shall be attached to this Agreement unless otherwise agreed by the parties:

1. Production Summary  
2. Delivery Plan and Milestones  
3. Production Budget  
4. Quarterly Report Template  
5. Equality and Diversity Monitoring Form  
6. Marketing and Communications Plan (to be developed)  
7. Risk Register (to be developed)

**THIS AGREEMENT IS HEREBY SIGNED** by the parties or their duly authorised representatives on the date of this Agreement.

|  |  |  |
| --- | --- | --- |
| Signed by [                                                  ]  for and on behalf of  **Hull 2017** | ) |  |
| ) |  |
| ) |  |
| ) |  |
| ) |  |
|  |  |  |

|  |  |  |
| --- | --- | --- |
| Signed by **[Name of Authorised Signatory]**  duly authorised for and on behalf of  **[Producer]** | ) |  |
| ) |  |
| ) |  |
|  |  |  |

**SECTION 1**

GENERAL CLAUSES

1. DEFINITIONS

In this Agreement, unless the context otherwise requires:

**2017Producers** means Hull 2017’s official commercial partners from time to time;

**Producer Brand** means the brand comprising Producer’s trade marks, trade names, logos and other intellectual property rights relating specifically to the same;

**City of Culture** means the series of curated events comprising the Hull 2017 UK City of Culture;

**Commissioned Work** means the project provisionally referred to by the parties as “[Substance]”;

**Completion** shall occur when Producer demonstrates to Hull 2017 that it has undertaken all the planned events and activities forming part of the Production to the agreed timetable and scope and final accounts relating to the Production have been submitted by Producer;

**Contribution** means a payment by Hull 2017 to Producer of £**125,000** or individual payments which together total not more than £**125,000**, to be made pursuant to this Agreement;

**Delivery Date[s]**means a definite date by which Hull2017 expects to see the activity outlined completed or commencing;

**Delivery Plan and Milestones** means the delivery plan and milestones attached to this Agreement to enable the delivery and success of the Production to be measured;

**Event of Default** has the meaning given to it in clause 6.1 of Section 2;

**Hull 2017 Brand** means the brand relating to City of Culture and containing the Hull 2017 Marks;

**Hull 2017 Brand Guidelines** means the Hull 2017 Brandguidelines, as amended from time to time, and all information relating to the use of the Hull 2017 Brand contained on the Hull 2017 website;

**Force Majeure Event** has the meaning given to it in clause 26.1 of Section 1;

**Licence Agreement** means the licence agreement to be entered into by the parties to this Agreement relating to the use of the Hull 2017 Brand and the Producer Brand;

**Marketing and Communications Plan** means the marketing and communications plan for the Project;

**Marks** means any trade marks, service marks, words, symbols, terms, logos, emblems, designs and/or designations;

**Merchandise** means any item(s) of merchandise whatsoever (including, without limitation, catalogues, DVDs, CDs or other forms of digital recording, posters and other publications and garments, footwear and clothing accessories) produced, manufactured or otherwise created (whether directly or indirectly) in connection with the Production;

**Production** means the production of the Commissioned Work at the Venue on the Delivery Date[s] and which is described in the Production Summary;

**Production Budget** means the budget agreed between the parties and attached to this Agreement;

**Production Summary** means the project summary agreed by the parties and attached to this Agreement;

**Risk Register** means the risk register relating to the Production;

Term has the meaning given in clause 19 of Section 1; and

Venue means [ ].

1. THE COMMISSIONED WORK AND THE PRODUCTION
   1. Hull 2017 commissions the Producer to create the Commissioned Work and to produce the Production as part of City of Culture.
   2. In consideration of the Producer performing its obligations under and in accordance with this Agreement, Hull 2017 shall pay the Contribution to the Producer in accordance with the terms of Schedule 2.
   3. The Producer acknowledges that the Contribution is paid on trust to the Producer for the sole purpose of creating the Commissioned Work and delivering the Production.
   4. The Delivery Plan and Milestones will form part of the basis for the reporting, monitoring and assessment of the services provided by the Producer under this Agreement.
2. PRODUCER RESPONSIBILITIES

Producer shall:

* + 1. create the Commissioned Work in accordance with the timetable set out in the Delivery Plan and Milestones;
    2. secure in perpetuity all consents required for use of original materials created by third parties which are used or embodied in the Commissioned Work including, but not limited to, permissions relating to copyright materials and musical samples, and provide written evidence to Hull 2017 that all such permissions have been secured, with the exception of any music covered by normal Performing Rights Society (PRS) arrangements permission for which shall be obtained by Hull 2017;
    3. advise Hull 2017 of any significant changes to the Commissioned Work, at the earliest possible moment, including but not limited to changes in production requirements for its performance. Any such changes must be specified in writing and are subject to the prior written approval of Hull 2017;
    4. produce and present the Production in a professional manner and in accordance with the Production Summary, to the best of Producer’s skills and abilities and in line with current best practice, and liaise closely with Hull 2017 in so doing, including preparing artistic and other reports and providing such information in relation to the Production as Hull 2017 may reasonably require;
    5. engage the services of all the artists, curators, producers, filmmakers, musicians, production crew, fashion designers, delivery partner organisations, administrative staff and other personnel required for the Production;
    6. provide all set, scenery, properties, interpretation materials and costumes required for the Production including but not limited to all specialised equipment required for the Production;
    7. obtain all necessary rights, licences, permissions and consents relating to the Production including visa and work permit provision for international artists;
    8. develop the Delivery Plan and Milestones for the Production for approval by Hull 2017, deliver the Production in accordance with the Delivery Plan and Milestones and not make any changes to the Delivery Plan and Milestones without the approval of Hull 2017;
    9. create and maintain a Risk Register for the Production which shall be in a form to be agreed with Hull 2017 and discussed with Hull 2017 on a regular basis;
    10. comply with Hull 2017’s regulations in respect of health safety and security when attending any premises of Hull 2017 or any venue of City of Culture and the provisions of The Health and Safety At Work Act 1974 and all regulations thereunder;
    11. provide Hull 2017 with the Quarterly Reports described in Section 2;
    12. inform Hull 2017 immediately in writing of anything that significantly delays, threatens or makes unlikely the successful delivery of the Production or any key part of it.
    13. [*use the Hull 2017 Brand on all relevant marketing and publicity materials in accordance with the Licence Agreement, the Hull 2017 Brand Guidelines and clauses 5 and 6 of section 1 of this Agreement;]*
    14. [*if a Production is free to audiences, generate audiences for the Production in collaboration with Hull 2017, its marketers and partner organisations;]*
    15. deliver the Producer Brand for use by Hull 2017 in accordance with the Licence Agreement; and
    16. comply with any other relevant terms of this Agreement.

1. HULL 2017 RESPONSIBILITIES

Hull 2017 shall:

* + 1. Hull 2017 shall have the right to review the Commissioned Work after delivery of such work and shall either accept the Commissioned Work or, where the Commissioned Work has been rejected, shall allow the Producer a further reasonable period of time in which to rectify the problems and resubmit the Commissioned Work for its approval;
    2. [*deliver the Hull 2017 Brand for use by Producer in accordance with the Licence Agreement;]*
    3. liaise with Producer on a regular basis and assist Producer in ensuring the success of the Production;
    4. where relevant advise on matters relating to City of Culture including transportation, security, marketing and other related logistic and production issues;
    5. provide funding to effect the Production in accordance with Section 2 of this Agreement;
    6. assist Producer with the mitigation of any risks relating to the Production; and
    7. comply with any other relevant terms of this Agreement.

1. MARKETING AND COMMUNICATIONS
   1. [*Producer shall in consultation with Hull 2017 shall*]develop the Marketing and Communications Plan [*and such plan shall be subject to the approval of Hull 2017*].
   2. Hull 2017 shall develop a marketing and communications plan for City of Culture and shall promote the Production as part of this plan.
   3. [*The parties agree that both the timing and content of any public announcements (including public statements and press and other media) relating to the Production shall be agreed by the parties before any such announcement.*]
   4. [*Producer shall inform Hull 2017 in advance of any promotional or media activity in connection with the Production [for inclusion where Producer has a media partner: and in particular shall (i) liaise with Hull 2017 regarding the Production’s media partner(s); (ii) ensure that the media partner(s) relationship with the Production is always clear and that there is no confusion that the media partner is associated with City of Culture or the Hull 2017 Brand; and (iii) otherwise ensure that the media partner(s) respect(s) the relevant terms of this Agreement and that the rights of any Hull 2017 media partner shall take precedence over any other media partner].]*
2. BRANDING AND PROMOTION OF PRODUCTION AND HULL 2017
   1. [*To enable Hull 2017 and Producer to promote the Production in accordance with the Marketing and Communications Plan, Hull 2017 shall grant a licence of the Hull 2017 Brand to Producer in accordance with the separate Licence Agreement and Producer shall (i) grant a licence of the Producer Brand to Hull 2017 in accordance with the Licence Agreement and (ii) provide other relevant materials to Hull 2017 in accordance with this clause*.]
   2. *[Producer shall, at its own cost, ensure that the Production installs and maintains such signs and/or other promotional material indicating the involvement of Hull 2017 with the Production as Hull 2017 may require from time to time and, in addition, Hull 2017 shall be entitled to promote City of Culture on a full page of the Producer’s website [and on [two] pages of any brochure or programme being produced in relation to the Production].]*
   3. Producer shall provide to Hull 2017 and, in its arrangements with third parties including artists, shall ensure that Hull 2017 will have the right to use the Production’s name, images of any relevant venues, images and footage of the Production and an approved image and biography of participating artists for the promotion of City of Culture. If the Production is an exhibition involving artwork, Producer shall also ensure that all appropriate licences are procured to enable such artwork to be reproduced to publicise, promote and advertise the Production for the promotion of City of Culture.
   4. Producer shall provide to Hull 2017 examples of all promotional materials produced by Producer relating to the Production as soon as they become available to Producer. Producer shall provide to Hull 2017 a reasonable number of its standard press materials, press kits (including electronic press kits (EPKs)), photographs, jpegs, mpegs, videos, DVDs, flyers, posters and other such materials as Hull 2017 may reasonably request to enable Hull 2017 to promote the Productionas part of City of Culture.
   5. Hull 2017 shall be entitled to refer to Producer and the Production in souvenirs and other materials produced by or for Hull 2017 and to incorporate materials provided to Hull 2017 pursuant to clauses 6.2 and 6.3 above in those materials. Producer represents and warrants to Hull 2017 that the use by Hull 2017 as contemplated in this Agreement of any materials provided by Producer to Hull 2017 pursuant to this clause shall not infringe any pre-existing rights of any third party.
   6. [*Hull 2017 shall provide the Producer with a line credit relating to City of Culture and Producer shall include such credit in such marketing, promotional and publicity materials relating to the Production as shall be notified to the Producer by Hull 2017.*]
   7. The Producer shall provide Hull 2017 with a minimum of five digital images of the Production following completion and grant to Hull 2017 an irrevocable, royalty-free license in perpetuity, to use, copy, keep and disseminate any digital outputs as Hull 2017 see fit.
   8. [*The Producer shall ensure that any digital outputs of the Production are:*
      1. *free of charge for non-commercial uses for as long as this Agreement lasts;*
      2. *[licensed for use by others under the creative Commons licence ‘Attribution Non-commercial’ (CC BY-NC) for as long as this Agreement lasts unless Hull 2017 has agreed otherwise; ]*
      3. *not exploited commercially without Hull 2017’s prior written consent.]*
3. SPONSORSHIP OF PROJECT

Producer shall not, without Hull 2017’s consent, enter into any sponsorship or other commercial arrangement in relation to the Production.

1. NO UNAUTHORISED EXPLOITATION OF HULL 2017
   1. Other than as set out in this Agreement, Producer shall not, and shall use its best endeavours to procure that none of its sub-contractors shall: (i) commercially exploit the Hull 2017Brand; or (ii) do anything which creates an association of any kind between (a) Producer or any third party and (b) Hull 2017; or (iii) do anything which prejudices Hull 2017’s ability to offer 2017Partners an exclusive association to City of Culture or to otherwise raise revenue; or (iv) make any private commercial (or fundraising) use of its relationship to Hull 2017, and Producer acknowledges that it has no right to grant any rights to third parties to associate themselves, their goods or services with City of Culture.
   2. [*Other than as set out in the Hull 2017 Brand Guidelines, Producer shall not, without the written consent of Hull 2017, permit any Marks denoting or identifying any third party or any third party’s event, products or service(s) to be affixed to or form part of any materials that display or include the Hull 2017 Brand, or to be displayed in near proximity to the Hull 2017 Brand or Mark or to be promoted in connection with the Production*.]
   3. Producer shall take all reasonable steps to prevent any activity undertaken by a third party that creates an association with, or provides the third party, its products or services exposure in relation to, the Production (“Ambush Marketing”).
   4. Producer shall not, and shall use its best endeavours to procure that none of its sub-contractors shall (i) do anything to knowingly damage Hull 2017’s relationship with 2017Partners; nor (ii) do anything that would bring Hull 2017 or City of Culture into disrepute.
2. 2017 PARTNERS
   1. *Hull 2017 may propose specific fundraising activity associated with the Production to the Producer and such activity may include but is not limited to: cultivation events, artist/s talks, special tours, special viewings, limited edition artist works.*
   2. *The Producer shall support Hull 2017 in its fundraising activity for City of Culture and work together to deliver cultivation events and any other such activity associated with the Production.*
   3. *The Producer will include Hull 2017's guests, up to a reasonable number to be agreed, in any special events relating to the Production such as private views or access to receptions with artists.*
   4. *The Producer and its creative artists may be required by Hull 2017 to take part in fundraising activity for the purpose of fundraising for City of Culture. Hull 2017 will endeavour to provide the Producer with reasonable notice of any such activity.*
   5. *Producer acknowledges that the text referred to in clause 6.6 above shall include reference to 2017Producers and other funders providing funding for City of Culture and that the promotional materials referred to in clause 6.1 above shall include reference to 2017 Producers and other funders providing funding for City of Culture and shall also include (i) the Hull 2017 Marks and (ii) the marks of 2017 Partners and other funders of Hull 2017. For the avoidance of doubt, Producer shall not be required to reference such 2017Partners or other funders on any other marketing materials or websites relating to the Production unless specifically agreed by Producer or as otherwise set out in this Agreement.*
3. MERCHANDISE
   1. Producer shall not create and/or sell (or authorise any third party to create and/or sell) any Merchandise containing any element of the Hull 2017 Brand or which implies an association with City of Culture provided that any catalogue relating to the Production may contain the Hull 2017 Brand.
   2. Partner and Hull 2017 shall discuss in good faith (i) the possibility that Hull 2017 Merchandise shall be sold at all venues where the Project is held and (ii) that Hull 2017 may create merchandise relating to the Production..
4. TICKETING

Either Hull 2017 or the Venue shall be responsible for any ticketing relating to the Production.

1. SECURITY AND POLICING
   1. [*Producer shall be responsible for organising all security and policing for the Production*.]
   2. Producer agrees to co-operate fully with Hull 2017 on all matters relating to security for City of Culture.
2. POLICIES

Producer acknowledges the high priority given by Hull 2017 to (i) accessibility(ii) protection of children and vulnerable adults(iii) equality and diversity and (iv) environmental and sustainability, and that these are key considerations in planning for and staging City of Culture. Producer shall at all times:

* + 1. use its best endeavours to make the Production fully accessible to as wide a range as possible of artists, employees, participants and audiences, including complying with Arts Council England’s Creative Case;
    2. follow best practice in having appropriate policies and procedures in place to ensure the protection of children, young people and vulnerable adults; and
    3. use its best endeavours to adhere (and to procure adherence by any sub-contractors) to either (i) Hull 2017’s sustainability and equality and diversity policies from time to time in force or (ii) other substantively equivalent policies of its own.

1. EDUCATION
   1. *The Producer shall in consultation with Hull 2017 and its representatives develop an Education Plan for the Production and the objectives of such plan shall support the overall objectives of City of Culture and be subject to the approval of Hull 2017.*
   2. *The Producer shall document, record, monitor and evaluate its education activity relating to the Production.*
   3. *The Producer shall provide to Hull 2017 copies of all education materials produced by the Producer relating to the Production as Hull 2017 may reasonably request to re-use the materials as part of City of Culture. The Producer will ensure all education and engagement materials are appropriately credited and licensed for use by Hull 2017 in accordance with this Agreement.*
2. VOLUNTEERING
   1. Producer shall have the opportunity to request the services of volunteers recruited by Hull 2017 as part of the Hull 2017 volunteer programme.
   2. Producer recognises that it shall be required to comply with guidelines relating to volunteers being devised by Hull 2017 and Hull 2017 agrees to support the Producer in complying with such guidelines.
3. BROADCASTING
   1. Producer shall not, and shall ensure that any delivery partner shall not, arrange for the broadcast of any moving audio-visual and/or audio-only coverage of the Production without the prior approval of Hull 2017. For the avoidance of doubt, this clause does not prohibit clips of any part of the Production(s) being broadcast for news purposes only.
   2. Both parties shall work together to negotiate with the broadcaster to secure on-screen credits for the Producer and Hull 2017 in any broadcast of the Production(s).
4. MONITORING AND EVALUATION
   1. Producer shall complete the Equality and Diversity Monitoring form referred to in the Documentation section of this Agreement.
   2. Producer shall participate in the evaluation of the Production using the guidelines being developed by Hull 2017 and shall contribute fully to the evaluation of City of Culture which will be undertaken by Hull 2017, the University of Hull and other approved evaluators, including providing such data and statistics as Hull 2017 shall notify to the Producer relating to:
      1. the number and type of participants/audience of the Production;.
      2. artistic, technical or other business capacity building; and
      3. such other information as shall be required for evaluation and monitoring purposes.
5. LEGACY

It is acknowledged that the parties’ objectives for the Production include a measurable and long-term legacy (“**Legacy”**) and each party agrees to use its reasonable endeavours throughout the development and delivery of the Production to further the Legacy of the Production.

1. TERM

The term of this Agreement (**Term**) begins on the date of signature of this Agreement by both parties and shall, unless terminated earlier in accordance with this Agreement, expire on completion of the Production and the fulfilment of the Producer of its obligations under this Agreement.

1. INTELLECTUAL PROPERTY AND EXPLOITATION
   1. The Intellectual Property Rights in the Production are owned by the Producer. The Producer hereby grants consent for Hull 2017 to publicly present the Production as part of City of Culture.
   2. The Producer shall not permit the Production to be exhibited at any venue prior to the presentation of the Production as part of City of Culture, or in the United Kingdom prior to 31 December 2017 without Hull 2017’s prior written approval, which shall not be unreasonably withheld. Any future touring programme and associated activity will be mutually agreed between the Parties and subject to a separate agreement.
   3. In the event of any further or future exploitation of the Production in any media or medium, whether now in existence or in future developed, and not covered by this Agreement, the Parties agree to keep each other fully informed as to all and any negotiations with any third parties and not to enter into any contractual arrangements independently of each other without the other’s prior written agreement.
   4. Any subsequent exploitation of the assets of the Production which is agreed by the Parties shall be dealt with in a separate agreement and in such event Hull 2017 shall be entitled to a credit for any such subsequent exploitation.
   5. The Executive Producer will not sell, give away, licence or borrow against any assets of the Production (including any intellectual property rights) without first receiving Hull 2017’s prior written consent.
   6. [INCLUDE WORDING RE EXPLOITATION FROM CO-OPERATION AGREEMENT ?]
   7. The Producer warrants that it is vested with all the rights necessary to produce and publicly present the Production and that the Production does not and the presentation of the Production will not infringe any copyright or other rights of any other work or any third party rights.
   8. The Producer grants Hull 2017 a non-exclusive, irrevocable, royalty-free world-wide licence in perpetuity to use and reproduce any element of the Production for all its non-commercial purposes and activities, including but not limited to use on the City of Culture website, the internet and Hull 2017’s Intranet and for archival, preservation and collections management purposes, filming and photography, marketing purposes, fundraising, educational, publishing and exhibition purposes.
   9. Each party shall promptly notify the other if any claim or demand is made or action brought against them for infringement or alleged infringement of any Intellectual Property Rights which may adversely affect the Producer’s services or the supply, use or possession of any deliverable under this Agreement.
2. INSURANCE

The Producer shall either obtain or procure the obtaining of all usual insurance cover for the Production, which shall be with a reputable insurer and cover all risks of and incidental to the Producer’s obligations and responsibilities in relation to the Production, including (i) public liability, (ii) employer's and employee's liability (iii) insurance cover for all assets created as a result of Hull 2017 funding, and/or (iv) such other insurances as may be prudent in the circumstances or as may be reasonably required by Hull 2017. On request, Producer shall supply to Hull 2017 a copy of each insurance policy effected under this clause.

1. LIABILITY AND INDEMNITY
   1. Neither party shall be liable to the other under this Agreement for any loss of profits, business, contracts, data, market shares, anticipated savings, goodwill or revenue or for any other indirect, special or consequential loss or damage whatsoever, howsoever arising out of or in connection with the performance of its obligations under this Agreement or any breach of this Agreement provided (i) that nothing in this Agreement shall exclude or restrict either party’s liability for death or personal injury resulting from the negligence of that party or for any other liability which cannot be excluded or restricted by law and (ii) that this clause shall not apply to any matters referred to in the Licence Agreement.
   2. The Producer shall indemnify and keep indemnified Hull 2017 from and against all losses, actions, proceedings, damages, claims, costs, expenses and liabilities of whatever nature arising from or relating to:
      1. any breach of the Agreement (which for the avoidance of doubt includes breach of any obligations or warranties contained in this Agreement), common law or statute by the Producer (or any person for whom the Producer is responsible); or
      2. any claim in connection with the Production arising out of the action or default of the Producer; or
      3. any fraud, recklessness, wilful default, negligence, or gross incompetence by or of the Producer (including but not limited to its employees, contractors and/or agents), which may be brought against Hull 2017 or incurred by it, arising directly or indirectly out of or in connection with the Producer’s performance of this Agreement.

Save that this indemnity shall not apply to the extent that the Producer can demonstrate that such claims, proceedings, actions, damages, liability, costs, losses and expenses arise from any fraudulent, reckless, negligent, or grossly incompetent act or omission by Hull 2017 including but not limited to its staff, contractors or agents.

* 1. Hull 2017 shall reimburse the Producer in respect of all direct losses, actions, claims, costs and liabilities arising out of breach of this Agreement, common law or statute by Hull 2017 or any person for whom Hull 2017 is directly responsible.

1. CONFIDENTIALITY

Producer shall keep as strictly confidential the provisions of this Agreement and all materials and information of a confidential nature supplied by Hull 2017 in connection with the operation of this Agreement and shall not use the same, nor disclose the same to any third party without Hull 2017’s prior written consent, except as may be reasonably necessary to enable it to carry out its obligations under this Agreement; or where required by law or by an order of a court or other authority of competent jurisdiction.

1. TERMINATION
   1. If Hull 2017terminates this Agreement in accordance with clause 7.3 of Section 2 it shall not incur any liability to Producer.
   2. If City of Culture is not held for any reason, this Agreement shall terminate automatically with effect from the date on which it is officially announced that City of Culture will not be held or will not continue. With effect from such date, each party shall automatically be relieved of its obligations under this Agreement (except for those obligations which expressly or by implication are intended to survive termination) and, subject to clause 7.3 in Section 2, neither party shall have any liability to the other.
   3. Expiry or termination of the Agreement for whatever reason shall not affect either party’s rights or remedies that have accrued prior to the date of termination, nor the coming into force or the continuance in force of any provision of this Agreement which is expressly or by implication intended to come into or continue in force by or after expiry or termination, including clause 11 of Section 2, clauses 7, 8, 9, 16, 18, 20, 21, 22 and 27 of Section 1 and clause 11 of Section 2.
2. ANTI-BRIBERY

[TO BE AGREED] Need shortened version ?

1. DATA SHARING
   1. Where legally able to do so, the Producer shall provide Hull 2017 such access as shall be requested to marketing and other databases for the purposes of evaluation by Hull 2017 of the Production and City of Culture.
   2. Producer warrants that, to the extent it processes any Personal Data on behalf of Hull 2017:

### it shall act only on instructions from Hull 2017; and

### it has in place appropriate technical and organisational security measures against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data.

### only transfer Hull 2017 Personal Data to countries outside the European Economic Area that ensure an adequate level of protection for the rights of the data subject after written authorisation by Hull 2017 which may be granted subject to such conditions as Hull 2017 deems necessary.

* 1. In this clause 26, Personal Data has the meaning given in the Data Protection Act 1998.

[FURTHER WORDING TO BE AGREED]

FREEDOM OF INFORMATION WORDING ?

1. FORCE MAJEURE
   1. If either party is prevented from or delayed in the performance of any of its obligations under this Agreement by any event (a “**Force Majeure Event**”) beyond the reasonable control of that party, including, but not limited to, acts of God, civil commotion, war, earthquake, fire, flood, industrial action or terrorist action, then it shall notify the other party in writing of the circumstances, and shall be excused from performing those obligations for so long as the Force Majeure Event shall continue. If the Force Majeure Event continues for longer than 60 working days, the party not claiming relief under this clause shall be entitled to terminate the Agreement in whole or in part by giving the other party 30 working days’ written notice.
   2. If performance by either party of such party's obligations under this Agreement is only partially affected by a Force Majeure Event, such party shall at the other party's sole option nevertheless remain liable for the performance of those obligations that are not affected by the Force Majeure Event.
2. NOTICES

Any notice to be given under this Agreement shall be in writing and signed by or on behalf of the party giving it and shall be served by hand, registered post (or, if posted to or from the United Kingdom, an internationally recognised courier service) or fax to:

* + 1. in the case of Hull 2017: Pacific Exchange, 40 High Street, Hull HU1 1PA or +44 (0)1482 300300 (marked, in either case, for the urgent attention of Hull 2017’s Executive Director); or
    2. in the case of Producer: [*address*] or +44 (0)[*telephone number*] (marked, in either case, for the urgent attention of [♦]); or
    3. such other address or fax number as Producer may designate in accordance with this clause.

1. GENERAL
   1. Each party shall (and shall procure that any necessary third party shall) do such further acts, and execute and deliver such other documents, as may be reasonably requested from time to time by the other party in order to implement and give full effect to the provisions of this Agreement.
   2. Producer acknowledges that the Contribution is non-transferable, and that Hull 2017 may, but (unless Hull 2017 consents) Producer shall not nor shall it purport to, assign any of its rights under this Agreement.
   3. No person who is not a party to this Agreement shall have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement.The rights of the parties to terminate, rescind or agree any variation, waiver or settlement under this Agreement are not subject to the consent of any other person.
   4. This Agreement and the Hull2017 Brand Guidelines contain the entire agreement and understanding of the parties, and supersede any previous agreement or understanding between the parties, in relation to the subject-matter of this Agreement.
   5. No failure to exercise or delay in exercising any right or remedy under this Agreement shall operate as a waiver of that or any other right or remedy. The express rights and remedies provided by this Agreement are cumulative and, except as otherwise stated in this Agreement, do not exclude any other rights or remedies provided by law.
   6. The illegality, invalidity or unenforceability of the whole or part of any provision of this Agreement shall not affect the continuation in force of the remainder of this Agreement.
   7. Whenever the consent or approval of a party to this Agreement is required, such consent may be given or withheld by such party in its sole discretion, unless otherwise specifically stated.
   8. The provisions of this Agreement:

### (a) shall survive the termination of this Agreement where expressly stated and otherwise to the extent necessary to protect the rights of Hull 2017 in and to the Hull 2017 Brand and to effect the intent of the parties; and

### (b) shall also be for the benefit of the parties and their respective successors and permitted assignees.

* 1. Nothing in this Agreement (or in any of the arrangements contemplated by it) is, or shall be deemed to constitute, a partnership, joint venture, relationship or agency or contract of employment between the parties.
  2. If any dispute or claim between the parties arises out of or in connection with this Agreement then the matter shall be resolved by the parties’ respective senior executives.
  3. This Agreement and any related dispute or claim (contractual or non-contractual) shall be governed by, and construed in accordance with, the law of England and Wales. Each party irrevocably submits for all purposes in connection with this Agreement to the exclusive jurisdiction of the courts of England and Wales.

SECTION 2

**CONTRIBUTION**

1. CONTRIBUTION
   1. Hull 2017 shall pay the Contribution to Producer in accordance with and subject to the terms and conditions of this Agreement.
   2. Producer agrees that the Contribution shall only be spent in accordance with the Production Budget.
   3. For the avoidance of doubt, Hull 2017 shall not be responsible for any costs incurred by Producer which are greater than the amounts to be provided by it in accordance with the Production Budget.
2. TAXATION
   1. Each party shall duly comply with all requirements imposed on it by any applicable law or competent authority relating to tax (whether of the UK or elsewhere) arising in connection with the Production, and each shall be solely responsible in respect of its liabilities, assessments and charges to such tax and any withholdings, deductions, penalties, fines, surcharges and interest relating to the same.
   2. Any sums payable and/or other consideration provided by either party to the other under this Agreement are exclusive of VAT (if any), which is properly chargeable on the same.
   3. The Contribution is eligible for consideration for taxable supply for VAT purposes.
   4. If the Producer is registered for VAT it must keep proper and up to date records and it must make those records available and give copies to Hull 2017 when requested.
3. PAYMENT SCHEDULE
   1. Subject to clause 2.2 below, Hull 2017 shall pay the Contribution to Producer in quarterly instalments (the “**Instalment(s)**”) in accordance with the following procedure:

(a) Producer shall submit a written and financial report in the agreed form showing progress against (i) the Delivery Plan and Milestones and (ii) theProduction Budget (the “**Quarterly Report**”) to Hull 2017 on or before the 15th of the month after the end of the relevant quarterly reporting period (each quarterly reporting period being (i) January to March (ii) April to June (iii) July to September and (iv) October to December);

(b) representatives of Producer and Hull 2017 shall meet (in person or by telephone) within ten (10) working days of the due date of each Quarterly Report to discuss and evaluate the Quarterly Report;

(c) after Hull 2017 has approved the Quarterly Report, Producer must submit a grant claim in the agreed form (“**Contribution Claim**”) for the relevant quarterly payment period and Hull 2017 shall make payment of the relevant Instalment.

* 1. Unless Hull 2017 agrees otherwise, it shall not pay the Contribution to Producer at any time when:
     1. Hull 2017 is not satisfied with the information contained in either of (i) the Risk Register or (ii) the Quarterly Report; or
     2. an Event of Default has occurred and is continuing or would occur as a consequence of the payment of the Contribution; or
     3. any of the representations and warranties given in clause 6 would be incorrect in a material respect if it was then to be repeated by reference to the circumstances then pertaining.
  2. The final payment of the Contribution will be withheld until the Producer has:

1. submitted a final statement of income and expenditure against the Budget for the Production, signed by the senior finance officer of the Producer;
2. submitted a completed evaluation report of the Production; and
3. submitted all other documentation required under this Agreement. .
4. CO-FUNDING

Producer hereby [*confirms that the amounts of co-funding set out in the Production Budget have been committed to the Production and that written confirmation from each co-funder has been received by it/acknowledges that co-funding targets are set out in both the Production Budget and Delivery Plan and Milestones and that such targets must have been reached by any relevant milestone date in order for any further payments by Hull 2017 after such relevant milestone date* – *amend as appropriate*].

1. MONITORING

Producer shall throughout the Term provide Hull 2017 (and or its designees) with all information reasonably requested, and allow reasonable access to its premises or documentation relating to the Production, so as to enable Hull 2017 or its designees to (i) monitor the operation of the Production by Producer and the operation of this Agreement and (ii) undertake its own evaluation studies in order to inform Hull 2017 strategy development and delivery, from time to time.

1. REPRESENTATIONS AND WARRANTIES
   1. Producer represents and warrants that:
      1. No Event of Default has occurred and/or is continuing;
      2. Producer is not aware, after due enquiry, of anything which materially threatens the success or the completion of the Production;
      3. all information provided by or on behalf of Producer to Hull 2017 in connection with this Agreement, was true and accurate and not misleading when it was provided and nothing has occurred since then to make it untrue, inaccurate or misleading in any material respect; and
      4. Producer has disclosed to Hull 2017 all information which would or might reasonably be thought to influence Hull 2017 in the awarding of the Contribution to Producer.
   2. Producer agrees to immediately inform Hull 2017 if there is any change in the representations and warranties set out in clause 6.1.
   3. Whenever the Contribution is paid or requested, Producer is deemed to repeat these representations and warranties by reference to the circumstances then existing.
2. EVENTS OF DEFAULT
   1. Each of the events or circumstances set out in this clause 6.1 is an Event of Default (**Event of Default**):
      1. if at any time, Producer fails to perform or observe any term of this Agreement;
      2. if it becomes unlawful for Producer to perform any of its obligations under this Agreement;
      3. if at any time Producer has acted fraudulently or negligently in relation to this Agreement or the Production;
      4. if at any time any representation or statement made by or on behalf of Producer in this Agreement is not true and accurate in any material respect when made or deemed repeated;
      5. if any other event occurs which Hull 2017 reasonably believes will directly impact the ability of Producer to deliver the Production including but not limited to (i) Producer making significant changes to the Delivery Plan without the prior approval of Hull 2017 (ii) Hull 2017 reasonably believing that the Producer is not properly spending public monies (iii) there being a change of control of the Producer or (iv) the Producer being subject to an insolvency event.
   2. Producer shall promptly notify Hull 2017 if an Event of Default occurs or if Producer believes it will occur.
   3. If an Event of Default occurs Hull 2017 may at its sole discretion by notice to Producer and provided Hull 2017 has given Producer at least 30 days to rectify the Event of Default either (i) reduce the amount of the Contribution (ii) suspend all further payments of the Contribution and terminate this Agreement and/or (iii) make all or any further payments of the Contribution in respect of the Production subject to such further conditions as it may specify.
   4. Producer shall indemnify and keep indemnified Hull 2017 against all costs, expenses, actions, charges, claims, damages, proceedings and other liabilities sustained or incurred as a result of any Event of Default.
3. PUBLIC MONIES PROVISIONS
   1. Subject to clause 8.2, the Producer acknowledges and agrees that the Contribution shall constitute restricted funds such that the Contribution shall only be used by the Producer to satisfy costs in connection with the Production.
   2. The Producer acknowledges that the Contribution comes from public funds and it will not use the Contribution in a way that constitutes unapprovable State aid. In the event that it is deemed to be unapprovable State aid, then it will repay the entire Contributionwith immediate effect.
   3. The Producershall procure goods or services in a way that will give value for money. This means getting the best price for goods or services and having appropriate policies and procedures for competitive tendering in place for purchasing any capital items or services or a series of capital items or services The Producer understands that it must meet the relevant UK and European procurement legislation.
   4. The Producer will provide Hull 2017 with all reasonable assistance in the carrying out of any audit investigation of this Agreement.
   5. Producer agrees to ensure that, if required by Hull 2017, the Production’s accounts are certified by Producer’s auditors as a true and fair view of the Production.