

**HULL 2017 COMMISSIONING AND PRODUCTION AGREEMENT**

THIS AGREEMENT is made on 31 October 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) **NORTHERN SUBSTANCE LIMITED**, a company incorporated in England and Wales under company number 10399672 whose principal place of business is at 3rd Floor 14 Little Lever Street, Manchester, United Kingdom, M1 1HR (the "Producer").

**BACKGROUND**

Hull 2017 is organising UK City of Culture and Hull 2017 and Producer wish to enter into an agreement pursuant to which the Producer shall create and produce the Production as part of UK 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:

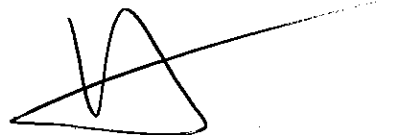
- 1. Production Summary
- 2. Delivery Plan and Milestones
- 3. Production Budget
- 4. Reporting Template
- 5. Equality and Diversity Monitoring Form
- 6. Marketing and Communications Plan (to be developed)
- 7. Risk Register (to be developed)

The following Hull 2017 policies and guidelines are referred to in this Agreement:

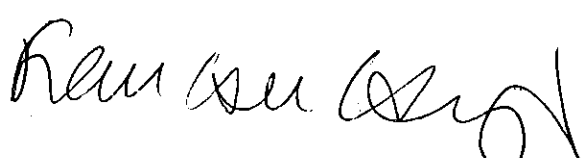
- 1. Access Guide
- 2. Environmental and Sustainability Policy
- 3. Health and Wellbeing Policy
- 4. Equality & Diversity Policy
- 5. Brand Guidelines
- 6. Volunteer Programme Partner Guidelines
- 7. Data Sharing Policy

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

Sam Hunt  
Executive Producer  
For an on behalf of  
Hull UK City of Culture 2017

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Fran Hegyi  
Executive Director  
For an on behalf of

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Hull UK City of Culture 2017

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Signed by **Luke Bainbridge**  
duly authorised for and on behalf of  
**Northern Substance Limited**

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## SECTION 1

### GENERAL CLAUSES

#### 1. DEFINITIONS

In this Agreement, unless the context otherwise requires:

**2017 Funders** means Hull 2017's official commercial partners and official suppliers from time to time;

**Box Office Income** means the box office receipts for the Production less groups sales, agency and credit card commissions, fees and discounts and VAT less the cost of running the Production (including the payment of royalties and any venue hire);

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

**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 £102,000 or individual payments which together total not more than £102,000, to be made pursuant to this Agreement;

**Delivery Dates** means 1 September 2016 – 10 December 2017;

**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;

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

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

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

**Hull 2017 Policies** means the (i) Accessibility (ii) Environmental and Sustainability (iii) Wellbeing and Communities (iv) Children and Vulnerable Adults and (v) Equality and Diversity Policies referred to in this Agreement;

**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 (including digital strategy) for the Production;

**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 project provisionally referred to by the parties as "Substance", which shall be produced at the Venue on the Delivery Dates 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;

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

**Venue** means City Hall, Hull and any other location where the Production is held (the main festival in December to be held in multiple venues across the city centre of Hull); and

**Volunteer Programme Partner Guidelines** means the Hull 2017 volunteer programme partner guidelines.

## 2. THE PRODUCTION

2.1 Hull 2017 commissions the Producer to create and produce the Production as part of UK City of Culture.

2.2 In consideration of the Producer performing its obligations in accordance with this Agreement, Hull 2017 shall pay the Contribution to the Producer in accordance with the terms of Schedule 2.

2.3 The Producer acknowledges that the Contribution is paid on trust to the Producer for the sole purpose of creating and delivering the Production.

2.4 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.

## 3. PRODUCER RESPONSIBILITIES

Producer shall:

(a) create the Production in accordance with the timetable set out in the Delivery Plan and Milestones;

(b) secure in perpetuity all consents required for use of original materials created by third parties which are used or embodied in the Production including, but not limited to, permissions relating to copyright materials and musical samples and any music covered by normal Performing Rights Society (PRS) arrangements, and provide written evidence to Hull 2017 that all such permissions have been secured;

- (c) advise Hull 2017 of any significant changes to the Production, 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;
- (d) 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;
- (e) 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;
- (f) 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;
- (g) obtain all necessary rights, licences, permissions and consents relating to the Production including visa and work permit provision for international artists;
- (h) 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;
- (i) 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;
- (j) when appropriate, produce an Event Safety Management Plan ("ESMP"), submit the ESMP to the Event Safety Advisory Group ("ESAG") in a timely manner and attend ESAG meetings when requested to do so, and ensure that all activities comply with the provisions of the ESMP;
- (k) produce risk assessments, method statements and safe systems of work and ensure that all activities comply with the provisions of these documents;
- (l) comply with (i) Hull 2017's policies in respect of health safety and security when attending any premises of Hull 2017 or any venue of UK City of Culture and (ii) the provisions of The Health and Safety At Work Act 1974, the Management of Health & Safety at Work Regulations 1999 and all regulations thereunder and the Construction (Design and Management) Regulations 2015;
- (m) provide Hull 2017 with the Progress Reports described in Section 2;
- (n) 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.
- (o) 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;
- (p) if the Production is free to audiences, generate audiences for the Production in collaboration with Hull 2017, its marketers and partner organisations;

- (q) deliver the Producer Brand for use by Hull 2017 in accordance with the Licence Agreement; and
- (r) comply with any other relevant terms of this Agreement.

#### **4. HULL 2017 RESPONSIBILITIES**

Hull 2017 shall:

- (a) have the right to review the Production after delivery of such work and shall either accept the Production or, where further development of the Production is required, shall allow the Producer a further reasonable period of time in which to rectify the problems and resubmit the Production for its approval;
- (b) deliver the Hull 2017 Brand for use by Producer in accordance with the Licence Agreement;
- (c) liaise with Producer on a regular basis and assist Producer in ensuring the success of the Production;
- (d) where relevant advise on matters relating to UK City of Culture including transportation, security, marketing and other related logistic and production issues;
- (e) provide funding to effect the Production in accordance with Section 2 of this Agreement;
- (f) assist Producer with the mitigation of any risks relating to the Production; and
- (g) comply with any other relevant terms of this Agreement.

#### **5. MARKETING AND COMMUNICATIONS**

- 5.1 Producer shall develop the Marketing and Communications Plan and such plan shall be subject to the approval of Hull 2017.
- 5.2 Hull 2017 shall develop a marketing and communications plan for UK City of Culture and shall promote the Production as part of this plan.
- 5.3 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 governed by the Marketing and Communications Plan
- 5.4 Producer shall inform Hull 2017 in advance of any promotional or media activity in connection with the Production and shall obtain the consent of Hull 2017 before entering into any agreement with a media partner.

#### **6. BRANDING, PROMOTION AND CREDITING**

- 6.1 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.

- 6.2 Producer shall work with Hull 2017 to 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.
- 6.3 Hull 2017 shall be entitled, at no cost to Hull 2017, to promote UK City of Culture and events forming part of UK 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.
- 6.4 Producer shall obtain the approval of Hull 2017 prior to producing any marketing or promotional materials relating to the Production, including press kits (including electronic press kits (EPKs)), press materials, videos, DVDs, flyers, posters, digital content and other such materials ("**Marketing Materials**") and shall provide Hull 2017 with a reasonable number of such Marketing Materials and such other materials as Hull 2017 may reasonably request to enable Hull 2017 to promote the Production as part of UK City of Culture.
- 6.5 Producer acknowledges that Hull 2017 wishes to use the Production name, images of relevant venues, images and footage relating to the Production, approved images and biographies of artists participating in the Production (the "**Materials**") for marketing and promotion of the Production and UK City of Culture and shall provide the Materials to Hull 2017 for such usage.
- 6.6 Producer grants Hull 2017 a non-exclusive, fully paid up, royalty free, irrevocable, perpetual, worldwide licence to use, copy, reproduce and modify the Materials for the purposes of marketing and promotion of UK City of Culture and represents and warrants to Hull 2017 that the use of the Materials by Hull 2017 as contemplated in this Agreement shall not infringe any pre-existing rights of any third party.
- 6.7 The Producer agrees (i) that the following line credits shall be included in all marketing, promotional and publicity materials relating to the Production produced by the Producer and (ii) to ensure that such line credits are used by third parties in any marketing or promotional materials of this and all subsequent presentations of the Production, in each case ensuring such credit is (i) equal in size and position with all other producer credits and (ii) accompanied by the Hull 2017 Mark:

***Presenting Credit for presentation of original production in Hull by Hull 2017:***

*"Hull UK City of Culture 2017  
presents  
Substance"*

- 6.8 Where legally able to do so, Producer shall provide to Hull 2017 such access as shall be requested to marketing and other databases for the purposes of promotion by Hull 2017 of the Production and UK City of Culture.
- 6.9 The Producer shall provide Hull 2017 with a minimum of five high resolution and professionally shot 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.
- 6.10 The Producer shall ensure that any digital outputs of the Production are:
- (a) free of charge for non-commercial uses for as long as this Agreement lasts; and
  - (b) not exploited commercially without Hull 2017's prior written consent.

## **7. SPONSORSHIP OF PROJECT**

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

## **8. NO UNAUTHORISED EXPLOITATION OF HULL 2017**

8.1 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 2017 Brand; or (ii) do anything which creates an association of any kind between (a) Producer or any third party and (b) Hull 2017; or (iii) 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 UK City of Culture.

8.2 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.

8.3 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").

8.4 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 2017 Partners; nor (ii) do anything that would bring Hull 2017 or UK City of Culture into disrepute.

## **9. 2017 FUNDERS**

9.1 Hull 2017 is carrying out fundraising activity for UK City of Culture and, where requested by Hull 2017, the Producer shall support such fundraising through Production related activities which may include cultivation events, artist/s talks, special tours, special viewings, limited edition artist works and other activity associated with the Production.

9.2 Hull 2017 is carrying out promotional and engagement activities for UK City of Culture and may require the Producer and its creative artists to take part in such activities. Hull 2017 will endeavour to provide the Producer with reasonable notice of any such activity.

9.3 Producer acknowledges that the promotional materials referred to in clause 6.2 above shall include reference to 2017 Funders and other funders providing funding for UK City of Culture and shall also include (i) the Hull 2017 Marks and (ii) the marks of 2017 Producers and other funders of Hull 2017. For the avoidance of doubt, Producer shall not be required to reference such 2017 Producers 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.

## **10. MERCHANDISE**

10.1 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 UK City of Culture provided that any catalogue relating to the Production



may contain the Hull 2017 Brand, unless agreed in writing with and approved by Hull 2017.

- 10.2 Producer and Hull 2017 shall discuss in good faith (i) the possibility that Hull 2017 Merchandise shall be sold at all venues where the Production is held and (ii) that Hull 2017 may create merchandise relating to the Production.

## **11. TICKETING**

- 11.1 Either Hull 2017 or the relevant Venue shall be responsible for any ticketing relating to the Production and Hull 2017 shall be entitled to all Box Office Income.
- 11.2 Hull 2017 and Producer agree that the first £9000 of Box Office Income shall be retained by Hull 2017 and that a proportion of any further Box Office Income shall be used to enhance the Production.
- 11.3 Hull 2017 shall be entitled to receive:
- (a) such number of complimentary tickets for each performance forming part of the Production as the parties shall agree, acting reasonably;
  - (b) 80 complimentary tickets to any VIP or other guest events relating to the Production in December 2017 (eg private views or access to receptions with artists);

## **12. SECURITY AND POLICING**

- 12.1 Producer shall be responsible for organising all security and policing for the Production.
- 12.2 Producer agrees to co-operate fully with Hull 2017 on all matters relating to security for UK City of Culture.

## **13. POLICIES**

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

- (a) 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 and Hull 2017's Accessibility Policy;
- (b) follow best practice in having appropriate policies and procedures in place to ensure the protection of children, young people and vulnerable adults including policies for lost children; and
- (c) use its best endeavours to adhere (and to procure adherence by any sub-contractors) to Hull 2017's Environmental and Sustainability Policy, Equality and Diversity Policy and Health and Wellbeing Policy.

## **14. CREATIVE LEARNING**

- 14.1 The Producer shall collaborate with Hull 2017 to develop a Learning and Engagement Plan for the Production and the objectives of such plan shall support the overall objectives of UK City of Culture and be subject to the approval of Hull 2017.

14.2 The Producer shall document, record and monitor its learning and engagement activity relating to the Production and shall ensure that all learning and engagement materials are (i) approved by Hull 2017 and (ii) appropriately credited and licensed for use by Hull 2017 in accordance with this Agreement.

14.3 Each of the Producer and Hull 2017 shall provide to the other copies of all learning and engagement materials relating to the Production for use as part of UK City of Culture and the Production's own learning and engagement programme.

14.4 The Producer shall ensure that senior members of the Production's artistic team shall be available to meet with participants of Hull 2017's learning and engagement programme at times to be agreed between the parties.

## **15. VOLUNTEERING**

15.1 Producer shall have the opportunity to request the services of volunteers recruited by Hull 2017 as part of the Hull 2017 volunteer programme.

15.2 Producer recognises that volunteers shall be required to wear Hull 2017 volunteer uniforms and that it shall be required to comply with the Volunteer Programme Partner Guidelines and Hull 2017 agrees to support the Producer in complying with these guidelines.

## **16. BROADCASTING**

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.

## **17. MONITORING AND EVALUATION**

17.1 Producer shall complete the Equality and Diversity Monitoring form referred to in the Documentation section of this Agreement.

17.2 Producer shall (i) participate in the evaluation of the Project using the guidelines being developed by Hull 2017 (such guidelines to include the collection and sharing of data from a range of beneficiary groups) and (ii) contribute fully to the evaluation of UK 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:

- (a) the number and type of participants/audience of the Project;
- (b) artistic, technical or other business capacity building; and
- (c) such other information as shall be required for evaluation and monitoring purposes.

## **18. LEGACY AND ARCHIVING**

18.1 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.

18.2 The Producer shall document the Production for archival purposes through film, photography and other digital outputs, and shall provide such outputs to Hull 2017 and grant to Hull 2017 an irrevocable, royalty-free license in perpetuity, to use, copy, keep and disseminate such outputs for archival and legacy purposes.

## **19. INTELLECTUAL PROPERTY AND EXPLOITATION**

19.1 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 UK City of Culture.

19.2 The Producer shall not permit the Production to be exhibited at any venue prior to the presentation of the Production as part of UK City of Culture, or in the United Kingdom prior to November 2016 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.

19.3 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.

19.4 Any subsequent commercial exploitation 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 and Producer shall be entitled to any royalty, fee or revenue derived from the Production but confirms that any such income shall be used solely to invest in the Production.

19.5 The 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.

19.6 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.

19.7 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 UK 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.

19.8 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.

## **20. 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.

## 21. 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. Producer shall supply to Hull 2017 a copy of each insurance policy effected under this clause.

## 22. LIABILITY AND INDEMNITY

22.1 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.

22.2 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:

- (a) 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
- (b) any claim in connection with the Production arising out of the action or default of the Producer; or
- (c) 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.

22.3 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.

## **23. 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.

## **24. TERMINATION**

24.1 If Hull 2017 terminates this Agreement in accordance with clause 5.3 of Section 2 it shall not incur any liability to Producer.

24.2 If UK 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 UK 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 5.3 in Section 2, neither party shall have any liability to the other.

24.3 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 clauses 7, 8, 9, 17, 18, 19, 21, 22, 23 and 27 of Section 1.

## **25. ANTI-BRIBERY**

Neither party will tolerate bribery in any form (as defined by the Bribery Act 2010 and any subsequent law). Each party represents, warrants and undertakes to the other party that it has in place, and will follow, adequate anti-bribery policies and procedures. Each party acknowledges that any breach of its obligations under this Clause would constitute a material breach of contract for which the other party will be entitled to terminate this Agreement with immediate effect.

## **26. DATA SHARING**

26.1 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 marketing and of evaluation by Hull 2017 of the Production and UK City of Culture.

26.2 Producer warrants that, to the extent it processes any Personal Data on behalf of Hull 2017:

- (a) it shall act only on instructions from Hull 2017; and
- (b) 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.
- (c) 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.

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

## 27. FORCE MAJEURE

27.1 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.

27.2 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.

## 28. 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:

- (a) in the case of Hull 2017: Pacific Exchange, 40 High Street, Hull HU1 1PS or +44 (0)1482 300300 (marked, in either case, for the urgent attention of Hull 2017's Executive Director); or
- (b) in the case of Producer: 3rd Floor 14 Little Lever Street, Manchester, United Kingdom, M1 1HR or +44 (0) 7713160981 (marked, in either case, for the urgent attention of Luke Bainbridge); or
- (c) such other address or fax number as Producer may designate in accordance with this clause.

## 29. GENERAL

29.1 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.

29.2 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.

29.3 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.

29.4 This Agreement and the Hull 2017 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.

- 29.5 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.
- 29.6 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.
- 29.7 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.
- 29.8 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.
- 29.9 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.
- 29.10 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.
- 29.11 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

- 1.1 Hull 2017 shall pay the Contribution to Producer in accordance with and subject to the terms and conditions of this Agreement.
- 1.2 Producer agrees that the Contribution shall only be spent in accordance with the Production Budget.
- 1.3 Unless otherwise agreed in writing by the parties, each party shall be responsible for the costs and expenses incurred by it in the course of performing its obligations under this Agreement.
- 1.4 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. PAYMENT SCHEDULE

- 2.1 Subject to clause 2.2 below, Hull 2017 shall pay the Contribution to Producer in instalments (the "Instalment(s)") in accordance with the following procedure:

- (a) Producer shall complete the Reporting Template and submit both (i) the completed Reporting Template (the "Progress Report") and (ii) a contribution claim in the agreed form for the relevant payment period ("Contribution Claim") to Hull 2017 on the following dates:

October 24 2016: Progress report due.

September 15 2016: Contribution Claim: £31,000

January 9 2017: Progress report due

January 16 2017: Contribution Claim: £31,000

June 5 2017: Progress Report Due

June 12 2017: Contribution Claim: £31,000

January 8 2018: Progress Report/Evaluation due

January 15 2018: Final Contribution Claim: £9,000

- (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 Progress Report to discuss and evaluate the Progress Report and, after Hull 2017 has approved the Progress Report, Hull 2017 shall make payment of the relevant instalment.
- 2.2 Unless Hull 2017 agrees otherwise, it shall not pay the Contribution to Producer at any time when:



- (a) Hull 2017 is not satisfied with the information contained in either of (i) the Risk Register or (ii) the Progress Report; or
- (b) an Event of Default has occurred and is continuing or would occur as a consequence of the payment of the Contribution; or
- (c) any of the representations and warranties given in clause 5 would be incorrect in a material respect if it was then to be repeated by reference to the circumstances then pertaining.

2.3 The final payment of the Contribution will be withheld until the Producer has:

- (a) submitted a final statement of income and expenditure against the Budget for the Production, signed by the senior finance officer of the Producer;
- (b) submitted a completed evaluation report of the Production; and
- (c) submitted all other documentation required under this Agreement.

### 3. 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.

### 4. REPRESENTATIONS AND WARRANTIES

4.1 Producer represents and warrants that:

- (a) no Event of Default has occurred and/or is continuing;
- (b) Producer is not aware, after due enquiry, of anything which materially threatens the success or the completion of the Production;
- (c) 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
- (d) 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.

4.2 Producer agrees to immediately inform Hull 2017 if there is any change in the representations and warranties set out in clause 5.1.

4.3 Whenever the Contribution is paid or requested, Producer is deemed to repeat these representations and warranties by reference to the circumstances then existing.

### 5. EVENTS OF DEFAULT

5.1 Each of the events or circumstances set out in this clause 6.1 is an Event of Default (**Event of Default**):

- (a) if at any time, Producer fails to perform or observe any term of this Agreement;
- (b) if it becomes unlawful for Producer to perform any of its obligations under this Agreement;
- (c) if at any time Producer has acted fraudulently or negligently in relation to this Agreement or the Production;
- (d) 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;
- (e) 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.

5.2 Producer shall promptly notify Hull 2017 if an Event of Default occurs or if Producer believes it will occur.

5.3 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.

5.4 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.

## **6. PUBLIC MONIES PROVISIONS**

6.1 Subject to clause 7.2, 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.

6.2 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 Contribution with immediate effect.

6.3 The Producer shall 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.

6.4 The Producer will provide Hull 2017 with all reasonable assistance in the carrying out of any audit investigation of this Agreement.

6.5 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.

## 7. TAXATION

- 7.1 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.
- 7.2 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.
- 7.3 The Contribution is eligible for consideration for taxable supply for VAT purposes.
- 7.4 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.

**Substance**

**Pre Event Activations**

Oct-16 Hull	£ 4,000
Jan-17 Liverpool	£ 4,000
Apr-17 Manchester	£ 4,000
Jul-17 Leeds	£ 4,000
Oct-17 Newcastle/Gateshead	£ 4,000
Dec-17 Hull	£ 5,000
date the small activations in smaller towns	£ 4,500
	<b>£ 29,500</b>

**Publications / writer fees**

articles - Aug/Sep-16	£ 2,000
Substance booklet	£ 6,000

(print & distribution, Arts venues but also supermarkets etc)

**Marketing & Comms**

Image creation (Substance logo)	£ 2,000
website	£ 2,000
physical print - design cost and distribution across the north	£ 15,000

**December Weekend**

Talent fees	£ 4,000	£ 12,000
Supporting talent	10 £ 1,500	£ 15,000
Riders	20 £ 50	£ 1,000
Travel and accommodation	10 £ 250	£ 2,500
Travel and accommodation - non CoC	10 £ 250	£ 2,500
		<b>£ 33,000</b>

**Production**

AV	3 £ 1,500	£ 4,500
Lighting	3 £ 1,200	£ 3,600
Sound	3 £ 1,500	£ 4,500
Staff	3 £ 1,000	£ 3,000

**Substance fees**

Luke Bainbridge	14 £ 2,000	£ 21,000
John Draper		£ 3,500
David		£ 3,500
Event Production - Front of House		£ 3,500
Event Production - Volunteers	1 £ 5,000	£ 5,000
		<b>£ 33,000</b>

**Access**

Travel (Meetings)	£ 3,500
Travel - non CoC	£ 2,500
	<b>£ 8,500</b>

**Expenditure without ticket income**

	<b>£ 134,000</b>
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**Income**

<b>Total Estimated Box Office</b>	<b>£ 9,000</b>
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**Total Expenditure with ticket income from satellite events and December weekend festival**

	<b>£ 125,000</b>
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**Funds CoC Manage**

Image Creation	£ 2,000
Marketing	£ 5,000
Travel for meetings	£ 2,500
Artist Accommodation	£ 2,500
December Weekend Production	£ 15,000
Event Production - Front of House	£ 3,500
Event Production - Volunteers	£ 1,500
<b>Total Retained Funds</b>	<b>£ 32,000</b>
<b>Total Money going to Substance LTD</b>	<b>£ 102,000</b>

Income Expectations			
<b>Satellite Events</b>			
Price	Audience	No. of events	
£ 5.00	100	5	
<b>Total income</b>	<b>£ 2,500.00</b>		
<b>December Festival</b>			
Price	Audience	No. of events	
£ 10.00	900	1	
<b>Total income</b>	<b>£ 9,000.00</b>		
<b>Total income Target</b>	<b>£ 11,500.00</b>		
VAT	£ 1,916.67		
CC Fees @ 3%	£ 218.50		
	£ 2,135.17		
<b>Total less VAT</b>	<b>£ 9,364.83</b>		

Activity	Activity Detail	Date [Happening]
Milestones	Steering Group Meeting in Hull.	19/05/2016
Milestones	Receive a detailed project budget	27/05/2016
Milestones	Full contract with timeline and budget attached	15/08/2016
Milestones	Commission initial articles in reference to the north and confirm project outline.	31/08/2016
Milestones	Begin build of Discover section of 2017 website for Substance.	10/10/2016
Milestones	Lead image and copy created	01/11/2016
Event	Polar Bear: Hull	06/11/2016
Milestones	First payment released to Substance. After contract signed and agreed.	30/11/2016
Milestones	Revisit budget after contracting content and curating events pre-2017 December weekend	30/11/2016
Milestones	Luke start contract contributors of online editorial, print editorial and editorial for other publications	30/11/2016
Milestones	Pencil peripheral venues for December weekend	16/01/2017
Event	Pre Activation Event: Liverpool	21/01/2017
Milestones	Confirm Content Outline: with rough idea of content over weekend.	01/02/2017
Milestones	Contract all performers for the December weekend.	01/04/2017
Milestones	Have all marketing material ready for full programme announcement	01/04/2017
Event	Pre Activation Event: Manchester	22/04/2017
Milestones	Release booklet with articles by artists working in the north.	30/06/2017
Event	Pre Activation Event: Leeds	22/07/2017
Event	Pre Activation Event: Newcastle	02/09/2017
First Event	Hull City Hall	08/12/2017
Event	Hull City Hall	09/12/2017
Milestones	Substance Festival Weekend: Hull (See Substance Festival Weekend arrangement for event detail)	09/12/2017
Event	Hull City Hall	10/12/2017
Milestones	Substance Festival Weekend: Hull (See Substance Festival Weekend arrangement for event detail)	10/12/2017