***HULL 2017 SUPPLY OF SERVICES AGREEMENT –*** ***USER NOTES***

1. This Agreement is for use when contracting a supplier to provide services whose value exceeds £20,000. For procurement of services worth £20,000 or less, a purchase order can simply be issued, along with Hull 2017’s standard terms of procurement. This Agreement is **not** for use for the provision of Goods or Goods and Services nor when Hull 2017 is engaging an individual to provide services or engaging a company to provide the services of a particular individual – for which there are separate templates.
2. Set out a detailed description of the Services in Schedule 1, along with a timetable for the provision of the Services in Schedule 2 and a description of the Service Fee and payment schedule in Schedule 3.
3. This Agreement provides that (unless otherwise stated) the price is exclusive of VAT. If the price is to be stated as inclusive of VAT, this must be expressly stated in Schedule 3.

***Amend all text/spaces in square brackets as appropriate.***

***Delete these user notes before issuing any contract based on this template.***

**HULL 2017 SERVICES 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. **[SUPPLIER NAME]**, a company incorporated in England and Wales under company number [♦] whose [registered office / principal place of business] is at [♦] (the “**Supplier”**).

**BACKGROUND**

Hull 2017 wishes to engage the Supplier, and the Supplier agrees, to provide the Services on and subject to the provisions of this Agreement

1. DEFINITIONS AND INTERPRETATION
   1. In this Agreement:

|  |  |
| --- | --- |
| **Business Day** | means a day (other than a Saturday or Sunday) on which banks are generally open for normal banking business in the UK; |
| **Business Hours** | means 9.30 a.m. to 5.30 p.m. in the relevant location on a Business Day; |
| **City of Culture** | means the series of curated events comprising the Hull 2017 UK City of Culture; |
| **Control** | means the ability to direct, or to cause the direction of, the affairs of another, whether through the ownership of voting securities, by board appointment, by contract or otherwise; |
| **Existing Works** | means (to the extent owned and/or controlled by the Supplier and/or any of the Supplier Personnel) those work(s) or material(s) (or part(s) of the same) severable from the Works and comprising Intellectual Property Rights subsisting before the date of this Agreement and developed independently of the Supplier’s obligations under this Agreement; |
| **Hull 2017 Marks** | means any trade marks, trade names, logos or other Intellectual Property Rights of Hull 2017, including marks and designs relating to City of Culture; |
| **Indemnified Parties** | means Hull 2017 and Hull 2017’s Personnel (including their respective heirs, personal representatives and successors); |
| **Intellectual Property Rights** | means any and all copyright, database rights, rights in designs, trade marks, domain names, goodwill, patents, rights in confidential information and any other intellectual property rights (including, where relevant, all extensions, reversions, revivals and renewals of the same), in each case whether registered or unregistered and including all applications (and rights to apply) for protection of such rights and all similar or equivalent rights or forms of protection which now, or will in the future, subsist in any jurisdiction; |
| **Hull 2017 Property** | means any personal property of Hull 2017 which the Supplier removes from the Premises in performing this Agreement or otherwise is in or comes into the Supplier’s or any Supplier Personnel’s possession or control (including any property that is created by or for the Supplier and belongs to Hull 2017 by virtue of this Agreement); |
| **Losses** | means any and all claims, proceedings, actions, demands, damages, losses, liabilities, penalties, fines, charges, surcharges, interest, costs and expenses of any nature whatsoever (including any damages or compensation paid on legal advice to compromise or settle any claim and any reasonable legal and other professional fees), in each case whether arising directly or indirectly; |
| **Personnel** | means, collectively and individually in relation to any person, that person’s officers, officials, trustees, members, directors, employees, secondees, volunteers, consultants, advisers, agents, representatives, clients, customers, contractors and/or sub-contractors; |
| **Premises** | means the location(s) where the Services are to be delivered, as specified in Schedule 1 of this Agreement (or advised by Hull 2017 to the Supplier within a reasonable time before such delivery); |
| **Purchase Order** or **PO** | means the Hull 2017 purchase order relating to the Services; |
| **Service Fee** | means the price of the Services stated in Schedule 3 of this Agreement; |
| **Service Levels** | means such specific standards of performance as may be incorporated in this Agreement to be achieved by the Supplier in providing the Services; |
| **Services** | means any work and/or services (including any part(s) of them) to be provided by or for the Supplier, as described in Schedule 1 of this Agreement, including such related and ancillary services as Hull 2017 may reasonably require from time to time; |
| **Supplier Personnel** | means, in relation to the Supplier and to the extent (directly or indirectly) involved in the provision of the Services: (a) any and each person that has Control of, or is under the Control of or under common Control with, the Supplier (including any sub-contractor of the Supplier under this Agreement (if any) and any company or other entity which is at the relevant time a subsidiary or holding company of the Supplier or a subsidiary of any such holding company, the words **subsidiary** and **holding company** having the meanings given in section 1159 of the Companies Act 2006) (**Supplier Affiliate**); and (b) the Supplier’s and the Supplier Affiliates’ Personnel; |
| **UK** | means the United Kingdom of Great Britain and Northern Ireland, the Isle of Man and the Channel Islands; |
| **Union** | means any applicable union, guild, collective bargaining institution, association, professional body, governing body, (if relevant) sporting body or other similar organisation; |
| **Union Rules** | means, solely to the extent applicable to the engagement under this Agreement (if at all), any rules, regulations, restrictions, orders or code of conduct imposed pursuant to any collective bargaining agreement and/or by any Union; |
| **VAT** | means any applicable value added tax and any applicable comparable, analogous, additional or replacement sales or turnover tax that may be introduced during the continuance of this Agreement; and |
| **Works** | means any and all existing and future work(s), material(s) and other product(s) created and produced, and performance(s) rendered, by or for the Supplier and/or any one or more of the Supplier Personnel (either individually or in conjunction with any other person(s)) as part of or in connection with the provision of the Services (including any modification(s) and adaptation(s) of the same and any part(s) of the same and of such modification(s) and adaptation(s)), including concepts, ideas, inventions, designs, text, visual materials, drawings, sketches, presentations, slides, graphics, logos, models, documents, reports, manuals, plans, scripts, notes, specifications, photographs, images, films, video and/or audio recordings, transparencies, negatives, prints, digital files, musical compositions, lyrics, dramatic treatments, choreography, typographical arrangements, information, data, computer programs, code, hardware, software and/or all other works and materials in whatever form (including hard copy and electronic form), but excluding the Existing Works. |

* 1. In this Agreement, unless the context otherwise requires, any reference to:
     1. in relation to Services, **delivery** or **provision** or **supply** (and related words) shall be interpreted as a reference to the delivery, provision, supply, performance or sale of Services;
     2. **person** includes any individual, company, partnership, joint venture, association, organisation, trust, state or state agency (in each case whether or not having separate legal personality);
     3. Hull 2017 includes, for the purposes of any and all grants, assignments and confirmations of rights, consents and waivers under this Agreement, that person’s successors, licensees and assigns;
     4. any document to which this Agreement refers shall be construed as a reference to such document as amended, varied, supplemented, novated and/or replaced in any way from time to time; and
     5. a statute or statutory provision is a reference to that statute or statutory provision as amended, consolidated, replaced and/or re-enacted from time to time and includes any subordinate legislation from time to time in force made under it.
  2. In this Agreement, unless the context otherwise requires:
     1. any obligation imposed on the Supplier shall include an obligation on the Supplier to procure compliance by the applicable Supplier Personnel with such obligation; and
     2. any negative obligation imposed on the Supplier (or to be procured to be imposed on any Supplier Personnel) shall be construed as if it were also an obligation not to permit, suffer or assist the doing of the act or thing in question.
  3. All consents, approvals, notices, directions and/or instructions to be given or obtained under this Agreement shall be given in writing and, subject to any timeframes which are expressly set out, given in a timely manner. Where this Agreement provides for the consent, approval or agreement of Hull 2017 to be given or obtained, Hull 2017 shall, unless otherwise stated, have absolute discretion to grant or withhold such consent, approval or agreement.

1. SERVICES
   1. The Supplier shall, in accordance with the provisions of this Agreement, provide Hull 2017 with the services specified in Schedule 1 in accordance with the timetable specified in Schedule 2.
   2. The Service Fee and the payment schedule shall be as specified in Schedule 3.
   3. This Agreement applies to the exclusion of any terms and conditions submitted in any way by or on behalf of the Supplier in relation to the Services (**Supplier Conditions**) despite any contrary provisions in any of the Supplier Conditions, and the Supplier irrevocably waives any right that it otherwise might have to rely on the Supplier Conditions.
2. PROVISION OF SERVICES
   1. The Supplier shall deliver the Services in accordance with the instructions and date(s) specified in Schedule 2 (or, to the extent that no date or timescale is specified, then at such time as Hull 2017 may approve in writing or reasonably request). Time is of the essence for delivery of the Services. The Supplier shall, and shall procure that the Supplier Personnel shall, (without further liability to Hull 2017) devote such of their time, attention and ability to the Services (including any overtime or additional shifts required) as may be necessary to meet those timescales. If there is any likelihood that the Supplier or any Supplier Personnel will fail to provide any Services within the applicable timeline for performance, then, without prejudice to any of Hull 2017’s other rights or remedies, the Supplier shall promptly give Hull 2017 advance notice of the nature and effects of the circumstances in question and a best estimate of the duration of such circumstances.
   2. The Supplier shall, and shall procure that the Supplier Personnel shall: (a) provide the Services, and create, produce and/or (as applicable) render the Works, with all due care, skill and diligence and in a proper, efficient, professional and timely manner; (b) provide the Services in accordance with good industry practice; (c) provide (or procure the provision of) such equipment as may be expressly or impliedly required under this Agreement or otherwise mutually agreed; (d) consult with Hull 2017 fully at regular intervals in relation to, and obtain Hull 2017’s prior approval of, all material elements of the Services; and (e) comply with Hull 2017’s reasonable requirements with regard to the provision of the Services (while not being subject to Hull 2017’s direction as to the manner in which the Services are provided).
3. DUTIES
   1. The Supplier shall fully and actively co-operate and liaise with any other contractors, sponsors and/or service providers of Hull 2017 from time to time (or as expressly requested to do so from time to time by Hull 2017) in connection with the provision of the Services and the Supplier shall ensure that all Supplier Personnel shall similarly co-operate. The Supplier shall arrange and/or attend meetings with other contractors, sponsors and/or service providers as reasonably appropriate and shall use its best endeavours to ensure that no interruption or interference is caused by or to such other contractors, sponsors and/or service providers in or by the carrying out of the Services.
   2. The Supplier shall maintain complete and accurate books and records relating to this Agreement until 31 March 2018.  The Supplier shall, on Hull 2017’s reasonable request, provide Hull 2017 or its nominee (**Hull 2017 Party**) with such financial information relating to the Supplier as the Hull 2017 Party may request.
   3. The Supplier shall, without prejudice to its obligations under this Agreement or otherwise at law, at its own cost effect and maintain for the term of this Agreement (and thereafter in compliance with good industry practice and applicable laws) insurance in an adequate amount (as may reasonably be expected to be maintained by a competent supplier experienced in providing services equivalent to the Services) and with a reputable insurer to cover all risks of and incidental to this Agreement. The Supplier shall, on request, supply to Hull 2017 a copy of each insurance policy effected under this Agreement and shall ensure that each such policy is maintained in full force and effect.
4. FEES AND PAYMENT
   1. The Service Fee shall, unless otherwise agreed in writing by Hull 2017, be in sterling and exclusive of VAT, but inclusive (except to the extent expressly specified otherwise in this Agreement) of all other taxes, duties, liabilities, costs, expenses and charges of any kind incurred by the Supplier and/or the Supplier Personnel in connection with the Services. The Service Fee is in full consideration of all Services to be provided and of all the Supplier’s and the Supplier Personnel’s grants, assignments and confirmations of rights, consents and waivers pursuant to this Agreement, and are specifically inclusive of any and all (a) minimum amounts payable under such Union Rules (if any) as may apply to the Services, (b) residual, repeat, re-use, re-run, foreign-use, new-use and other fees and payments of whatever nature due to the Supplier and/or to any of the Supplier Personnel under such Union Rules, (c) payments due to the funds of any Union (including any pension, welfare or other “fringe benefit” payments required under such Union Rules) and (d) equitable remuneration (if any) payable for the assignment and any exercise of rights in respect of the Works.
   2. Hull 2017 shall pay all invoices that are in Hull 2017’s reasonable opinion valid, correct and compliant in all respects with this clause 5, within 30 days of the date of receipt of invoice (or such greater and/or recurring period as the parties may agree in writing). This obligation shall be subject to any withholding obligations imposed on Hull 2017 by any authority having jurisdiction over this Agreement. No amount shall be payable for any period during which any Services cannot be provided due to incapacity or other absence. Hull 2017 reserves the right to deduct from any monies due or becoming due to the Supplier any monies due from the Supplier to Hull 2017, whether in respect of this Agreement or otherwise.
   3. Invoices may be rendered only after the Services (or, if the Services are to be provided in instalments, the relevant instalment of the Services) have, at the relevant time, been correctly provided in accordance with this Agreement. Any acceptance by Hull 2017 of Services delivered substantially in advance of a scheduled delivery shall not accelerate the time for payment by Hull 2017. The Supplier must issue invoices which quote the relevant PO number (which the Supplier shall obtain if not already issued) and which, if the Supplier is VAT‑registered, are valid VAT invoices. The Supplier shall provide Hull 2017 with such supporting documentation and/or other supporting information as Hull 2017 may from time to time request. Where there are outstanding amounts after 31 December 2017, the Supplier shall promptly issue a consolidated account to Hull 2017 in full and final settlement of all liabilities in connection with this Agreement and shall negotiate in good faith with Hull 2017 to reach settlement and invoicing of such amount.
   4. If any sum under this Agreement is not paid when due, then, as a substantial remedy for late payment, that sum shall bear interest from the due date until actual payment at 4% per annum over the base rate from time to time of Lloyds TSB Bank plc. The Supplier is not entitled to suspend any provision of Services, even if Hull 2017 is in breach of this Agreement (including for non‑payment).
5. QUALITY OF SERVICES AND SUPPLIER PERSONNEL
   1. The Supplier warrants, represents and undertakes to Hull 2017 that the Services will:
      1. conform in all respects with this Agreement and all laws, orders, regulations, bye-laws, codes of conduct and best practice that are applicable to the Services;
      2. be provided in a proper and efficient manner by appropriately qualified, trained and experienced personnel under proper management and supervision, with all due care, skill and diligence, in accordance with good industry practice and to such high standard of quality as it is reasonable for Hull 2017 to expect in all the circumstances from a competent supplier experienced in providing supplies equivalent to the Services;
      3. not contain anything that is offensive or harmful, nor bring (nor will the Supplier bring) Hull 2017 or City of Culture into disrepute; and
      4. meet the Service Levels.
   2. The Supplier shall, and shall procure that the Supplier Personnel shall, comply with: (a) all applicable laws and regulations; (b) all applicable Union Rules; (c) such practices, policies, codes, procedures and guidelines as may from time to time be reasonably required by Hull 2017, which may include Hull 2017’s policies on (i) conflicts of interests (ii) gifts and gratuities (iii) procurement (iv) equality and diversity and (v) environment and sustainability (copies of which can, in each case, be obtained from Hull 2017 on request or may, in certain instances, be published on the Hull 2017 website); and (d) all bona fide conditions of access and other protocols, rules, regulations and/or requirements (e.g. security and confidentiality requirements) imposed by each person owning and/or controlling any location or venue at which the Services are to be provided (including any requirements relating to (i) prohibited activities and/or items and/or (ii) the prompt vacation of the premises and removal of personal property at the end of the relevant provision of the Services).
   3. The Supplier is acting, in the performance of this Agreement, as an independent contractor. The Supplier shall, to the extent required under this Agreement, supply the services of certain Supplier Personnel. Any such Supplier Personnel are not employees or agents of Hull 2017. The Supplier shall not hold itself (or any of the Supplier Personnel) out as such or as having any authority to bind, or to incur any liability on behalf of, Hull 2017. The Supplier assumes full responsibility for Supplier Personnel’s acts and omissions and shall be solely responsible (except to the extent expressly specified otherwise in this Agreement) for all costs, claims and liabilities (including all remuneration, benefits, entitlements and outgoings) in respect of all Supplier Personnel, including any and all wages or other remuneration, holiday pay, payment of PAYE, National Insurance contributions, pension contributions and otherwise, up to and including the expiry or termination of this Agreement. The Supplier shall inform all Supplier Personnel supplied to perform the Supplier’s obligations under this Agreement that they are not entitled to any employee benefits offered by Hull 2017.
   4. The Supplier shall, promptly at Hull 2017’s request, withdraw and/or replace any Supplier Personnel assigned to perform the Services if any such person is, in Hull 2017’s reasonable opinion, not supplying the Services in accordance with the obligations under this Agreement.
6. INTELLECTUAL PROPERTY RIGHTS
   1. The Supplier hereby irrevocably and unconditionally:
      1. grants and assigns to Hull 2017 absolutely and with full title guarantee the Supplier’s entire right, title and interest (whether vested, contingent or future and including all Intellectual Property Rights and the right to sue for and recover damages for past infringements) in and to the Works, such assignment, where the subject-matter is copyright not yet in existence, being by way of present assignment of future copyright;
      2. grants and confirms to Hull 2017 every consent under the Copyright, Designs and Patents Act 1988 and any other laws now or in future in force in any jurisdiction which may be required for the fullest use of the Works, without liability or acknowledgement to the Supplier or any Supplier Personnel;
      3. agrees that Hull 2017 shall be entitled to film, photograph and/or record the Supplier and Supplier Personnel (either individually or as part of a group), their provision of the Services and the Works and grants to Hull 2017 the right to use the Works and such films, photographs and recordings and to issue publicity concerning the same in any medium or format in which the same (or any part(s) of the same) may be included and to use and reproduce the Supplier’s and each Supplier Personnel member’s name, professional name, image, likeness, voice, signature and biographical materials for all purposes in connection with the production, promotion and/or use of the Works (including in connection with City of Culture);
      4. agrees that Hull 2017 has no obligation to use the Works and may edit, copy, add to, delete, adapt, translate or otherwise modify or deal with the Works in any way that Hull 2017 sees fit; and
      5. waives, and undertakes not to assert, any moral rights or similar rights or other non-transferable rights in relation to the Works under the present or future laws of any jurisdiction,

in each case: (i) throughout the universe; (ii) for the full period during which such rights subsist (including all renewals, revivals, reversions and extensions of the same) and thereafter (to the fullest extent possible) in perpetuity; and (iii) via any and all media (now or in the future known). Without limiting the foregoing, for the purposes of the laws of the USA and any other analogous jurisdiction, each of the Works shall be deemed to be a “work made for hire” and Hull 2017 shall be deemed to be the author.

* 1. The Supplier shall procure that any Supplier Personnel involved in the origination, creation, production or rendering of the Works shall on request by Hull 2017 promptly sign, and deliver to Hull 2017, a written assignment of rights in Hull 2017’s standard form (which Hull 2017 shall provide on request).
  2. The Supplier hereby unconditionally and irrevocably grants to Hull 2017 a royalty-free, non-exclusive and perpetual licence throughout the universe to use, reproduce and maintain any Existing Works used to provide the Services.
  3. To the extent reasonably practicable: (a) the Supplier shall procure from the owner of any third-party Intellectual Property Rights required for Hull 2017’s use of the Services and/or Works (**Relevant Purposes**) the written grant of a licence, or (if the owner itself is a licensee of those rights) an authorised sub‑licence, to Hull 2017 to use, reproduce, maintain and/or modify such Intellectual Property Rights for the Relevant Purposes; and (b) such licence or sub-licence shall be unconditional, irrevocable, royalty-free, non-exclusive, perpetual and for the universe, and shall include the right for Hull 2017 to sub-license, transfer, novate or assign such licence or sub-licence.
  4. The Supplier warrants, represents and undertakes to Hull 2017 that:
     1. the Supplier shall deliver the Works to Hull 2017 in the manner and on the dates agreed;
     2. the Supplier has full capacity and authority to enter into, and the Supplier and each of the Supplier Personnel have (and will continue to have) all necessary licences, visas, permits and consents to perform the Supplier’s obligations under, this Agreement and is entitled to grant, assign and confirm (free from any encumbrance) the rights expressed to be granted, assigned and confirmed under this Agreement (**Rights**);
     3. the Works are (or, as applicable, will be) original and have not (or, as applicable, will not have), without Hull 2017’s written consent, previously been published or otherwise exploited, and (subject to clauses 7.1 and 7.2) the Supplier will be the sole owner of the Rights;
     4. nothing in the Works or Services does, will or might (nor will or might their use by or for Hull 2017): (i) breach any contract or duty of confidence or privacy or otherwise infringe or violate the rights of any third party; (ii) contain any obscene, harmful, offensive or defamatory material; (iii) constitute a contempt of court or otherwise expose Hull 2017 to any civil or criminal proceedings; (iv) bring Hull 2017 into disrepute; and/or (v) expose any such person and/or any member(s) of the public to any hazard or other harm;
     5. the Supplier has not assigned, licensed or otherwise dealt with or encumbered any right, title or interest in or to the Works, and will not purport to do so in the future;
     6. the Supplier has obtained or will obtain (to the fullest extent possible) from all applicable copyright collecting association(s) to which the Supplier has assigned or would have assigned in advance the Supplier’s copyright in future works the express exclusion of any Works from the general assignment of existing or future works; and
     7. the Supplier will promptly disclose full details of the Works to Hull 2017’s designee and will not (and will procure that the Supplier Personnel will not), without Hull 2017's prior written consent, otherwise disclose or (except only for the purpose of providing the Services) make use of the Works.
  5. Each party shall procure (or procure the performance of) all further acts and things and execute and deliver (or procure the execution and delivery of) all such further documents as may be required by law or as may be necessary or reasonably required to give effect to this Agreement (including to vest all right, title and interest in any Works in Hull 2017 or its nominee absolutely and to secure copyright, design-right, patent, trade-mark or other appropriate forms of protection for the Works). This shall include the execution of any further and/or confirmatory copyright assignments by the Supplier and/or any Supplier Personnel as required by Hull 2017.

1. DATA PROTECTION
   1. The Supplier shall, to the extent it processes any Personal Data on behalf of Hull 2017:

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

### ensure 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. The Supplier acknowledges and agrees that Hull 2017 may hold and process Personal Data relating to the Supplier Personnel from time to time for Hull 2017’s legal, personnel, administrative and management purposes and may make such data available to any other person(s) (whether within or outside the European Economic Area) that are reasonably required to receive such data in connection with the Services and/or City of Culture.
  2. In this clause 8, Personal Data has the meaning given in the Data Protection Act 1998.

1. CONFIDENTIALITY AND ANNOUNCEMENTS
   1. Supplier 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. The Supplier shall neither make, nor permit any person to make, (and shall procure that none of the Supplier Personnel shall make) any press or other public announcement or statement of any kind relating to this Agreement or its subject-matter without Hull 2017’s prior written approval, except to the extent required by applicable law or order of a court of competent jurisdiction or other competent authority.

1. NO MARKETING RIGHTS
   1. The Supplier shall not, and shall procure that none of the Supplier Personnel shall, knowingly participate in, facilitate or encourage any ambush marketing of City of Culture or act in any way which could harm the Hull 2017 or City of Culture brands, trade marks or other proprietary rights or those of the sponsors of Hull 2017.
   2. The Supplier shall have no right to use any of the Hull 2017 Marks or any of Hull 2017’s other Intellectual Property Rights (including the name “Hull 2017”) and shall not, and shall procure that none of the Supplier Personnel shall, represent (directly or indirectly) that any Services provided by the Supplier have been endorsed or approved by Hull 2017, or that the Supplier, such Supplier Personnel or the Supplier’s or such Supplier Personnel’s activities, products or services are in any way associated with Hull 2017 or City of Culture, except that the Supplier is authorised to publish or issue a factual statement about the Supplier’s provision of Services to Hull 2017.
   3. In order to protect the legitimate business interests of Hull 2017, neither the Supplier nor any Supplier Personnel, either during the continuance of this Agreement or at any time within three months after the expiry or earlier termination of this Agreement (except with the prior written consent of Hull 2017) directly or indirectly, either alone or with or on behalf of any third party solicit or interfere with or endeavour to entice away from Hull 2017 any person that was an employee, secondee, consultant, sponsor, contractor, supplier or customer of Hull 2017, and with whom or which the Supplier or such Supplier Personnel had contact during the continuance of this Agreement.
   4. The Supplier acknowledges that the provisions of clauses 9 and 10 are of such importance to Hull 2017 that damages may not be an adequate remedy for breach, and that injunctive relief may be a more appropriate remedy.
2. REMEDIES AND LIMITATION OF LIABILITY
   1. If this Agreement is terminated pursuant to clause 14.2 or the Supplier fails, in any material respect, to provide the Services (or any substantial part of them) in accordance with any of the provisions of this Agreement or otherwise to comply with this Agreement, Hull 2017 shall be entitled, without prejudice to its other rights or remedies (and whether or not all or any part of the Services have been accepted by Hull 2017):
      1. to rescind this Agreement (in whole or in part);
      2. to reject the Services (in whole or in part) and, where possible, to return them to the Supplier at the risk and cost of the Supplier on the basis that a full refund for such Services shall be promptly paid by the Supplier;
      3. to give the Supplier the opportunity, at the Supplier’s expense, within ten days after receipt of notice from Hull 2017 either: (i) to remedy any remediable defect in the Services; or (ii) to provide replacement Services and/or to carry out any other necessary work to ensure that the provisions of this Agreement are fulfilled;
      4. to refuse to accept any further provision of the Services, but without any further liability to the Supplier;
      5. to recover from the Supplier any expenditure reasonably incurred by Hull 2017 in obtaining the equivalent supplies in substitution from another supplier;
      6. to carry out at the Supplier’s expense any work reasonably necessary to make the Services comply with this Agreement;
      7. to claim for Losses incurred in consequence of the Supplier’s breach of this Agreement; and/or
      8. to order acceleration of the provision of the Services by any or all available means.
   2. Any remedy under this Agreement shall be without prejudice to any other right or remedy which has already accrued, or subsequently accrues, to Hull 2017, unless expressly agreed otherwise.
   3. Neither Hull 2017 nor any Indemnified Party shall be liable for:
      1. any Losses suffered or incurred by the Supplier or any Supplier Personnel if Hull 2017 delays or abandons production of City of Culture or use of the Services or any Works; or
      2. any loss of or damage to the Supplier’s or any Supplier Personnel’s personal property while in transit to or from or while at places where the Services are provided; or
      3. any personal injury or ailment or the death of the Supplier or of any Supplier Personnel arising out of or in the course of the provision of the Services, except to such extent, if at all, as the same was due to the relevant person’s negligence.
   4. In the event of any actual or alleged breach (of whatever nature) of this Agreement by Hull 2017, the Supplier’s rights and remedies shall be limited to an action at law for damages actually suffered (if any) and the Supplier shall not be entitled (a) to terminate or rescind this Agreement or (b) to any equitable or injunctive relief whereby the grants, assignments and/or confirmations of rights, consents and/or waivers pursuant to this Agreement and/or the use of the Services and/or Works could be restrained, restricted or otherwise affected.
3. INDEMNITY
   1. The Supplier shall indemnify each Indemnified Party on demand against any Losses incurred or suffered by such Indemnified Party as a result of or in connection with:
      1. any actual or alleged breach of the warranties, representations and undertakings contained in clause 7.5 and/or any actual or alleged infringement of any Intellectual Property Rights of any third party arising from the provision or use of the Services or the possession or use of any Works supplied under this Agreement;
      2. any actual or alleged breach of any other warranties, representations and undertakings contained in this Agreement (including in clause 6.1);
      3. any liability arising as a consequence of a breach of clause 6.3;
      4. any act or omission of the Supplier or any Supplier Personnel in connection with the Services and/or their provision; and/or
      5. any claim that the Services or their possession or use by an Indemnified Party breaches any statute or regulation or constitutes, or is alleged to constitute, a tort against a third party.
   2. No limitation of liability shall apply to the indemnity under clause 12.1(a) or clause 12.1(c).
   3. If any payment due from the Supplier under clause 12.1 is subject to tax (whether by way of direct assessment or withholding at its source), Hull 2017 shall be entitled to receive from the Supplier such amounts as will ensure that the net receipt, after tax, to Hull 2017 in respect of the payment is the same as it would have been were the payment not subject to tax.
   4. The Supplier hereby authorises Hull 2017 (without prior notice) to apply any sums due by way of remuneration to the Supplier under this Agreement or otherwise towards satisfaction of the Supplier's liability under this indemnity.
4. LIABILITY
   1. Nothing in this Agreement shall exclude or restrict either party’s liability for death or personal injury to the extent resulting from the negligence of that party or for any other liability which cannot be excluded or restricted by law.
   2. Without prejudice to clause 13.1 and subject to clause 12.2, neither party shall be liable to the other under this Agreement for:
      1. any loss of profits, business, contracts, data, market shares, anticipated savings, goodwill or revenue; or
      2. any 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, even if it was advised in advance of the possibility of such loss or damage.

* 1. Without prejudice to any other limitation or exclusion of liability under this Agreement (but subject to clauses 12.2, 13.1 and 13.4), the total liability for all claims in contract, tort, misrepresentation, restitution or otherwise arising in connection with the performance or contemplated performance or breach of this Agreement shall be limited to a sum equal to:
     1. for Hull 2017 to the Supplier, the Service Fee; and
     2. for the Supplier to Hull 2017, 125% of the Service Fee.
  2. The limit on liability under clause 13.3(b) shall not apply to any liability of the Supplier to the extent that the loss is either covered by the Supplier’s insurance (whether or not required to be procured by the Supplier under this Agreement) or would have been covered but for any act or omission of the Supplier in relation to such requirement.

1. EXPIRY, TERMINATION, CANCELLATION AND CHANGE
   1. This Agreement shall, unless terminated earlier in accordance with this Agreement, expire on (a) at least 30 days’ notice of termination by Hull 2017 to the Supplier or (b) on 31 December 2017 (or such later date as the parties may agree in writing), whichever is the earlier.
   2. Hull 2017 may, without prejudice to its other rights or remedies, terminate this Agreement with immediate effect by giving notice to the Supplier at any time if:
      1. the Supplier commits a material breach of this Agreement and (if such breach is capable of remedy) fails to remedy the breach within ten days (or such shorter period as Hull 2017 may reasonably specify in the circumstances) after receiving Hull 2017’s request in writing to do so; or
      2. the Supplier commits repeated breaches (not being individually material) of this Agreement, the cumulative effect of which constitutes a material breach and/or is sufficient to justify the reasonable inference that the Supplier would continue to provide a sub‑standard service in relation to a material provision of this Agreement; or
      3. the Supplier is in breach of clause 3.2 or clause 6.3; or
      4. the Supplier suffers an Insolvency Event (as defined in the following clause).
   3. **Insolvency Event** means, in relation to the Supplier, that it: (a) enters into any composition or arrangement with all or any class of its creditors; or (b) is the subject of any execution, distress, sequestration or other process enforced against any part of its undertaking or assets; or (c) is unable to pay, or has no reasonable prospect of being able to pay, its debts within the meaning of sections 123, 267 and 268 of the Insolvency Act 1986 (as applicable); or (d) brings or commences, or is the subject of, winding-up, bankruptcy or any other insolvency proceedings; or (e) has a receiver, manager, administrative receiver or administrator appointed over all or any part of its undertaking or assets; or (f) takes, suffers or is the subject of (or proposes to take or is threatened with) any similar or analogous action, event or proceedings in any jurisdiction in consequence of debt; or (g) ceases, or threatens to cease, to carry on its business in the normal course.
   4. This Agreement shall terminate if, and 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 be relieved of its obligations under this Agreement (except for those obligations that are expressly or by implication intended to survive termination) and, subject to clause 14.7, Hull 2017 shall have no liability to the Supplier. If City of Culture is postponed, the term of this Agreement shall be extended by a period equivalent to the period of postponement.
   5. Hull 2017 may cancel this Agreement in respect of all or part of the Services, defer the date of delivery and/or payment in respect of any Services ordered or reduce the volume or scale of any Services to be provided if the Supplier’s performance of this Agreement is prevented or delayed for more than 10 days due to acts, events, omissions or accidents which are beyond the reasonable control of either party.
   6. At any time prior to the due date for their provision, Hull 2017 may, by giving the Supplier at least 14 days’ notice: (a) increase or decrease in part all or any part of the Services with a corresponding increase or reduction in the Service Fee; or (b) cancel in full the quantities of Services.
   7. Following expiry of this Agreement or cancellation under clauses 14.4, 14.5 or 14.6 in respect of all or part of the Services by Hull 2017:
      1. Hull 2017 may return any Services in accordance with clause 11.1(b); and
      2. Hull 2017’s sole liability in respect of Services shall be to pay to the Supplier a fair and reasonable price for all Services performed before the date of expiry or cancellation, provided that (i) the Supplier submits a valid invoice for such price within 60 days after such date and (ii) under no circumstances will the Supplier’s claim include payment of any allowance for overhead or loss of profit.
   8. On any expiry, cancellation or termination of this Agreement (or earlier if requested by Hull 2017), the Supplier shall promptly deliver up to Hull 2017, and/or otherwise dispose of at Hull 2017’s direction (including, if specified, erasure of), all Works, all material of any kind (whether in hard copy or electronic or other form) embodying Confidential Information and any other Hull 2017 Property (including personal and/or other data) that may be in the Supplier’s or any Supplier Personnel’s possession or control (and/or the Supplier shall promptly procure such delivery-up or disposal).
   9. Expiry or termination of this Agreement for whatever reason shall not affect either party’s rights or remedies that have accrued before 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 such expiry or termination, including clauses 1, 2.3, 4.2, 4.3, 5.3, 5.4, 6.3, 7,8, 9, 10, 11, 12, 13, 14.7, 14.8, 14.9, 14.10, 15, 16, 17, 18 and 19.
   10. Except pursuant to clause 14.6 or as otherwise permitted under this Agreement, if Hull 2017 requests a change to this Agreement, the Supplier shall respond promptly to such request with a written proposal for provision of the revised Services and adjustment (if any) to the Service Fee and/or to the timescales for performance specified in this Agreement. No variation of this Agreement shall have effect unless expressly agreed in writing and signed by the duly authorised representatives of Hull 2017 and the Supplier (a successful exchange of faxed copies or PDFs or TIFFs by email being acceptable for this purpose), and Hull 2017 shall not be liable for any charges or costs relating to any changes to the Services or additional Services unless such changes are so agreed.
2. NOTICES
   1. 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 email to:
      1. in the case of Hull 2017, 40 High Street, Pacific Exchange, Hull HU1 1PS or the then-current email address of Hull 2017’s Executive Director (marked, in any such case, for the urgent attention of Hull 2017’s Executive Director); or
      2. in the case of the Supplier, [INSERT POSTAL ADDRESS] and [INSERT EMAIL ADDRESS]; or
      3. such other postal address or email address as the recipient may designate by notice given in accordance with this clause.
   2. A notice shall be deemed to have been received:
      1. if delivered by hand, at the time of delivery; or
      2. if sent by registered post, 48 hours after posting (or, if sent by an internationally recognised courier service, 48 hours from the date of delivery to the courier service); or
      3. if sent by email, at the time of successful transmission (except where such email gives rise to a system notification of failure of delivery, and except that any notice of termination of this Agreement shall simultaneously be confirmed by another valid means of serving notice under this Agreement),

provided that, where delivery occurs outside Business Hours, the notice shall be deemed to have been received at the start of the next Business Hours.

1. GENERAL
   1. This Agreement is binding on, and shall apply for the benefit of, the parties and their respective heirs, personal representatives, successors in title and permitted assigns. The Supplier may not, without Hull 2017’s prior written approval, assign, charge or otherwise dispose of all or any part of the benefit of this Agreement or sub‑contract any or all of its obligations under it. The Supplier shall provide Hull 2017 with reasonable details of any approved sub-contractors and shall remain solely liable to Hull 2017 for the performance of the Supplier’s obligations under this Agreement. Hull 2017 may assign, charge, novate or otherwise dispose of any or all of its rights under this Agreement and/or sub-contract any or all of its obligations under this Agreement to, or novate this Agreement in favour of, any third party. The Supplier hereby consents to any such disposal, sub-contract or novation.
   2. This Agreement contains the entire agreement of the parties, and supersedes any previous agreement, arrangement or understanding (whether oral or written) between the parties, in relation to the Services. Each party acknowledges that, in entering into this Agreement, it is not relying on any representation or other assurance except as expressly set out or referred to in this Agreement, provided that nothing in this Agreement shall limit or exclude any liability for fraud. If the Services are to be provided in instalments, this Agreement shall be treated as a single contract and not severable.
   3. No breach of any provision of this Agreement shall be waived or discharged except with the express written consent of the parties. 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.
   4. If a provision of this Agreement is, becomes or is found to be illegal, invalid or unenforceable (in whole or in part), the legality, validity and enforceability of the remainder of this Agreement shall not be affected.
   5. Nothing in this Agreement constitutes a partnership, joint venture, relationship of agency or contract of employment between the parties (or between either party and any other person(s) referred to in this Agreement).
   6. In accordance with the Contracts (Rights of Third Parties) Act 1999 (Act) Hull 2017 may enforce any provision(s) of this Agreement that confer any right(s) on Hull 2017 (whether expressed to be conferred on Hull 2017 by its actual name or conferred on Hull 2017 in its capacity as an Indemnified Party), and any Indemnified Party may enforce the provisions of clause 12. The parties do not require the consent of any third party (including any Indemnified Party) to rescind or terminate this Agreement or to vary it in any way (except in relation to any right(s) conferred under this Agreement on Hull 2017 and/or any Indemnified Party, to which extent such rescission, termination or variation shall require each such applicable third party’s express prior written consent). Except as expressly provided in this clause 16.6, no provision of this Agreement is intended to confer a benefit on, or to be enforceable by, any person who is not a party to this Agreement, whether under the Act or otherwise.
2. DISPUTES

The parties shall use reasonable endeavours to resolve any dispute or claim (contractual or non-contractual) arising in connection with this Agreement (**Dispute**) by prompt discussion in good faith at a managerial level appropriate to the Dispute. Such discussion shall not be a pre-condition to the commencement of legal proceedings before any court. Unless this Agreement has already been terminated, the parties shall continue to perform their obligations under this Agreement regardless of the nature of the Dispute.

1. GOVERNING LAW AND JURISDICTION

This Agreement and any Dispute 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 (including any such Dispute) to the exclusive jurisdiction of the courts of England and Wales.

**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  **[Supplier]** | ) |  |
| ) |  |
| ) |  |
|  |  |  |

SCHEDULE 1

SERVICES

[***Drafting note – Complete as appropriate. Consider whether the Services have already been adequately specified in a tender or quotation and, if so, whether the Services can be defined by attaching that document as an appendix***]

1. [Services]
   1. [♦].
   2. [♦].
2. [Further obligations of the Supplier]
   1. [♦].
   2. [♦].

SCHEDULE 2

TIMETABLE FOR PROVISION OF THE SERVICES

SCHEDULE 3

SERVICE FEE

1. PRICE
   1. [In this Schedule **Quotation** means the [tender submission / quotation letter] dated [*date*] [from the Supplier to Hull 2017], a copy of which is appended at Appendix [♦] [(it being agreed that all terms and conditions included in such quotation are superseded by this Agreement and shall have no effect, and shall be deemed to be deleted for the purposes of construing such quotation and the provisions of this Agreement that refer to such quotation)].]
   2. The total Service Fee for the Services shall, unless varied in accordance with the provisions of this Agreement, be [as specified in the Quotation / £♦].
   3. [The Service Fee for any Services for which an estimate or allowance has been given in the Quotation shall not be exceeded without Hull 2017’s prior written approval.]
   4. [The Service Fee for all Services described in this Agreement (as at the date of this Agreement) other than those items specifically described in this Agreement shall be deemed to be included in the total amount stated in the Quotation.]
2. PAYMENT SCHEDULE

[ ***Drafting note – Adapt/redraft the following wording as necessary.*** ]

* 1. [The Service Fee shall be payable to the Supplier by Hull 2017 in instalments. The Supplier shall provide Hull 2017 with an invoice for the respective amounts of the total Service Fee and on the respective dates as follows:
     1. as to [♦% / £♦], on or after [*date*];
     2. as to [♦% / £♦], during [*month*] 20[♦♦];
     3. as to [♦% / £♦], during [*month*] 20[♦♦]; and
     4. as to [♦% / £♦], during [*month*] 20[♦♦].]

1. [EXPENSES]

[ ***Drafting note – Set out here agreed expenses (if any) that are not included within the Service Fee. If none, delete this paragraph***