**HULL 2017 ARTIST COMMISSIONING AGREEMENT**

**THIS AGREEMENT** is made on 2016

**BETWEEN**

1. **HULL UK CITY OF CULTURE 2017 LIMITED** a company incorporated and registered in England and Wales with company number 09106231 (with registered charity number 1162199) whose registered office is at Pacific Exchange, 40 High Street, Hull, HU1 1PS (**“Hull 2017”**); and

2. **[QUENTIN BUDWORTH]** of [**insert address**] (the “**Contributor**”)

**BACKGROUND**

Hull 2017 is responsible for organising and hosting the Hull UK City of Culture 2017 (“**City of Culture**”) and has commissioned the Contributor to create a new work which it is intended will be used as part of City of Culture.

**AGREED TERMS**

1. **CONTRIBUTOR OBLIGATIONS**
   1. Hull 2017 commissions the Contributor to (i) produce the new work as detailed in Schedule 1 (the “**Commissioned Work**”) and (ii) deliver the Commissioned Work to Hull 2017 by the delivery date set out in Schedule 2 (the “**Delivery Date**”) and the Contributor accepts such engagement.
   2. The Contributor shall:
      1. create the Commissioned Work;
      2. adhere to the timetable set out in Schedule 2;
      3. secure in perpetuity all consents required for use of original materials created by third parties which are used or embodied in the Commissioned Work including, but not limited to, permissions relating to copyright materials and musical samples, and provide written evidence to Hull 2017 that all such permissions have been secured, with the exception of any music covered by normal Performing Rights Society (PRS) arrangements permission for which shall be obtained by Hull 2017;
      4. advise Hull 2017 of any significant changes to the Commissioned Work, at the earliest possible moment. Any such changes must be specified in writing and are subject to the prior written approval of Hull 2017;
      5. comply with Hull 2017’s regulations in respect of health safety and security when attending any premises of Hull 2017 or any venue of City of Culture and the provisions of The Health and Safety At Work Act 1974 and all regulations thereunder;
2. **HULL 2017 OBLIGATIONS**

2.1 Hull 2017 will produce, manage and pay the cost of production of the Commissioned Work, subject to timely delivery and acceptance of the Commissioned Work as set out in Schedule 2.

2.2 Hull 2017 shall have the right to review the Commissioned Work after delivery of such work and shall either accept the Commissioned Work or allow the Contributor a further reasonable period of time in which to rectify the problems and resubmit the Commissioned Work for its approval.

2.3 Hull 2017 reserves the right not to perform the Commissioned Work during City of Culture if it so chooses, without affecting any of its rights or obligations under this Agreement.

2.4 Hull 2017 shall be represented by Niccy Hallifax (“**Producer**”) in respect of all issues relating to this Agreement, contactable as follows: email: [niccy.hallifax@hotmail.com](mailto:niccy.hallifax@hotmail.com).

1. **FEE AND EXPENSES**
   1. In consideration of the provision by the Contributor of their services in the creation and delivery of the Commissioned Work pursuant to this Agreement, Hull 2017 shall pay the fee to the Contributor on the dates specified in Schedule 2 of this Agreement (the “**Fee**”).
   2. The Fee shall be inclusive of all sums payable by way of equitable remuneration (within the meaning of European Union Council Directive (EC) 2006/115) to the Contributor and all other persons in relation to the rental or lending of any works included in the Commissioned Work.
   3. The Contributor acknowledges that the Fee shall be in full and final consideration of all rights granted to Hull 2017 and no further sums shall be payable in connection with the use of the Commissioned Work by Hull 2017 its assignees or licensees or any Co-commissioners in accordance with this Agreement. If any part of the Fee is expressed to be conditional on acceptance of the Commissioned Work by Hull 2017 then such part shall not be payable if Hull 2017 in its entire discretion decides not to accept the Commissioned Work whether or not any reason for such decision is given by Hull 2017.
   4. The Contributor shall submit an invoice for the provision of the Commissioned Work which shall include any VAT payable (if applicable). Hull 2017 shall pay the Fee to the Contributor within 30 (thirty) days of receipt by Hull 2017 of a correctly completed invoice and all payments shall be made in accordance with the account details specified on such invoice.
   5. The Contributor shall not incur any expenses or costs on behalf of Hull 2017 unless either (i) agreed in Schedule 2 or (ii) with Hull 2017’s prior written consent. Hull 2017 shall reimburse those expenses agreed in advance as necessary for the proper performance of the Services within thirty (30) days of receipt of the Contributor’s invoice and all relevant receipts.
   6. Hull 2017 is entitled to deduct from any sums payable to the Contributor any sums that the Contributor may owe Hull 2017 at any time.
2. **INTELLECTUAL PROPERTY**
   1. Subject to clause 4.2, the Contributor grants Hull 2017 on an exclusive, royalty free basis (with the right to sub-licence and to co-commission) and without any restrictions or limitations for the period from the date of delivery of the Commissioned Work until 31 December 2017 (the “Term”):
      1. the right to use and exploit, publish and reproduce the Commissioned Work, throughout the world on any number of occasions and by any means whatsoever including by any and all media now known or hereafter devised; (including but not limited to all rights of communication to the public by satellite, internet streaming technology, internet-secure download and all kinds of television exhibition and by means of public exhibition);
      2. all and any rental and lending rights in relation to the licence of the Commissioned Work and the Contributor confirms that the Fee includes adequate and equitable remuneration in respect of the licence of the said rental right; and
      3. all consents, permissions, waivers and approvals required by Hull 2017 (whether under Part II of the 1988 Copyright Designs and Patents Act or otherwise) throughout the world to enable Hull 2017 to exploit the Commissioned Work, as it deems fit in its absolute discretion.
   2. In the event that any part of the Commissioned Work is subject to a creative commons licence then the Contributor licences the Commissioned Work to Hull 2017 subject to such creative commons licence.
   3. The Contributor hereby irrevocably waives all moral rights under the Copyright, Designs and Patents Act 1988 (and all similar rights in other jurisdictions) which it has or will have in any Commissioned Work, provided that Hull 2017 will afford the Contributor the credit “created by Quentin Budwortth".
   4. The Contributor may not exploit the Commissioned Work in any other format (e.g. film, television) without written agreement from Hull 2017 (not to be unreasonably withheld), and without payment to Hull 2017 to be agreed as appropriate.
   5. The Contributor grants Hull 2017 the right to use the Contributor’s name, approved likeness and approved biographical material in connection with the exploitation of the rights granted to Hull 2017 under this clause 4. Any material supplied by the Contributor or its representatives shall be deemed to be approved for the purposes of this clause.
   6. The Contributor shall not prevent Hull 2017 or any person authorised by it from exploiting the rights granted under this agreement in any manner, now existing or to be created in the future.
3. **CONTRIBUTOR’S UNDERTAKINGS**
   1. The Contributor warrants, undertakes and agrees with Hull 2017 that:
      1. the Contributor shall promptly comply with all reasonable instructions received from Hull 2017 in relation to the creation and delivery of the Commissioned Work;
      2. the Commissioned Work shall be technically and artistically suitable for inclusion in the City of Culture;
      3. the Commissioned Work shall be original to the Contributor and created by the Contributor and shall not have been previously published or exploited and shall not under the laws in force in any part of the world be obscene, libellous, blasphemous or offensive to religion;
      4. the Commissioned Work shall not infringe any right of copyright or performer’s right or performer’s property right or moral right or right of privacy or right of publicity or right of personality or trade mark right or right of confidence or any other right of any nature or any other right whatever of any third party nor be prejudicial or damaging to the reputation of Hull 2017;
      5. the Contributor shall be the sole author of the Commissioned Work;
      6. the Contributor is the sole absolute unencumbered legal and beneficial owner of all rights of copyright and other rights in and to the Commissioned Work throughout the world;
      7. the Contributor has the full right and power to enter into this agreement and has not assigned, licensed or incumbered or transferred or otherwise disposed of any rights of copyright or any other rights in or to the Commissioned Work to any person and shall not assign or license or otherwise encumber any of its rights in the Commissioned Work in any manner which might interfere with or be incompatible with any of the rights granted to Hull 2017 in this Agreement;
      8. all authors of any copyright works included in the Commissioned Work or from which the same may directly or indirectly be derived have irrevocably and unconditionally waived all rights which they may now have or which they may in future be entitled to pursuant to the provisions of the Copyright, Designs and Patents Act 1988 Sections 77, 80, 84 and 85 and any other moral rights legislation now existing or which may in future be enacted in any part of the world. The Contributor shall make full payment to such persons of all equitable remuneration (within the meaning of European Union Council Directive (EC) 2006/115) in respect of the rental or lending of their works by Hull 2017;
      9. Hull 2017 its assignees and licensees shall have the right to cut, transpose, adapt, edit, add to, delete from and/or alter the Commissioned Work in any way;
      10. the Contributor undertakes to indemnify Hull 2017 and to keep Hull 2017 fully and effectively indemnified from and against all actions, proceedings, claims, demands, costs (including without prejudice the legal costs of Hull 2017 on a solicitor and own client basis), awards and damages however arising directly or indirectly as a result of any breach or non-performance by the Contributor of any of the Contributor’s warranties, obligations or undertakings; and
      11. the Contributor shall do any and all acts (including without limitation the prosecution and defence of legal proceedings) and execute any and all documents in such manner and at such locations as may be required by Hull 2017 in its sole discretion in order to protect, perfect or enforce any of the rights granted or confirmed to Hull 2017 pursuant to this Agreement. As security for the performance by the Contributor of the Contributor's obligations under this Agreement in the event that the Contributor shall have failed following 14 days' notice from Hull 2017 to execute any document or perform any act Hull 2017 shall have the right to do so in the place and stead of the Contributor as the lawful appointed attorney of the Contributor and the Contributor undertakes and warrants that the Contributor shall confirm and ratify and be bound by any and all of the actions of Hull 2017 pursuant to this clause 6.1.12 and such authority and appointment shall take effect as an irrevocable appointment pursuant to the Powers of Attorney Act 1971 Section 4.
4. INSURANCE, LIABILITY AND INDEMNITY
   1. The Contributor shall indemnify Hull 2017 against any losses suffered by Hull 2017 as a result of any claim or threatened claim that the Commissioned Work infringes the intellectual property rights of any third party.
   2. Hull 2017's liability in respect of this Agreement shall be limited to the lesser of the amount of fees paid to the Contributor pursuant to this Agreement during the Contributor’s engagement or over the twelve month period prior to which such liability arose.
   3. Nothing in this Agreement excludes or limits Hull 2017's liability in respect of death or personal injury caused by the negligence of Hull 2017.
   4. The Contributor shall be fully responsible for and indemnify Hull 2017 against any liability, assessment or claim for:
      1. taxation whatsoever arising from or made in connection with this Agreement, where such recovery is not prohibited by law; and
      2. any employment-related claim or any claim based on worker status (including reasonable costs and expenses) brought by the Contributor against Hull 2017 arising out of or in connection with the provision of this Agreement, except where such claim is as a result of any act or omission of Hull 2017.
   5. Hull 2017 may satisfy such indemnity (in whole or in part) by way of deduction from any payment due to the Contributor.
5. TERMINATION
   1. Hull 2017 may at any time terminate the Contributor’s engagement with immediate effect with no liability to make any further payment to the Contributor if:
      1. the Contributor is in material breach of any of the Contributor’s obligations under this Agreement; or
      2. other than as a result of illness or accident, after notice in writing, the Contributor wilfully neglects to provide or fails to remedy any default in providing the Services.
   2. Any delay by Hull 2017 in exercising its rights to terminate shall not constitute a waiver of those rights.
   3. If the Contributor terminates this Agreement without cause the Contributor shall forthwith repay all sums paid by Hull 2017 to the Contributor up to the date of such termination or cancellation.
   4. In the event that Hull 2017 postpones, cancels, delays or abandons any or all of the production to which the Commissioned Work relates, Hull 2017 shall not be liable in respect of any claim for loss of publicity or opportunity to enhance the Contributor’s reputation, goodwill or business prospects.
6. **MARKETING AND PR**
   1. Hull 2017 shall be responsible for managing all media relations relating to any presentation of the Commissioned Work and, to this end, the Contributor agrees not to speak to the media (including but not exclusive to print, radio, television, digital and web-based media including social networking sites) about the Commissioned Work without Hull 2017’s prior agreement.
7. COMMERCIAL PARTNERS

The Contributor acknowledges that Hull 2017 has a range of commercial partners supporting the City of Culture and that these commercial partners shall be entitled to receive credit on materials relating to any presentation of the Commissioned Work.

1. **GENERAL**
   1. Nothing in this Agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, or authorise any party to make or enter into any commitments for or on behalf of any other party.
   2. Any notice or other communication required to be given to a party under or in connection with this Agreement shall be in writing and shall be delivered by hand or sent by pre-paid first-class post or other next working day delivery service, at its registered office (if a company) or (if an Contributor), their home address or sent by email to the email addresses notified by the respective parties from time to time.
   3. The Contributor shall treat all information of any kind supplied to him/her by or for Hull 2017 (except for information lawfully in the public domain before it is supplied) as confidential and shall not use such information (except only for the purpose of providing the Services), nor disclose it to any third party, nor make any press or other public announcement or statement of any kind relating to the provision of the Services, without Hull 2017’s prior written consent (except to the extent required by law or by a court of competent jurisdiction or other competent authority).
   4. This Agreement may only be varied by a document signed by both the Contributor and Hull 2017.
   5. The Contracts (Rights of Third Parties) Act 1999 shall not apply to this Agreement and no person other than the Contributor and Hull 2017 shall have any rights under it. The terms of this Agreement or any of them may be varied, amended or modified or this Agreement may be suspended, cancelled or terminated by agreement in writing between the parties or this Agreement may be rescinded (in each case), without the consent of any third party.
   6. If at any time any term or provision in this Agreement shall be held to be illegal, invalid or unenforceable, in whole or in part under any rule of law or enactment, such term or provision or part shall to that extent be deemed not to form part of this Agreement, but the enforceability of the remainder of this Agreement shall not be affected.
   7. Hull 2017 shall be entitled to assign or license any and all of its rights under this Agreement. All of the representations, warranties and covenants on the part of the Contributor contained in this Agreement shall be binding on the personal representatives, heirs and beneficiaries of the Contributor and the Contributor's estate and shall enure for the benefit of any assignee, licensee or sub-licensee of Hull 2017 and if such assignee or licensee undertakes direct with the Contributor to comply with Hull 2017's obligations in this Agreement Hull 2017 shall be under no further liability under this Agreement after that event.
   8. This Agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
   9. No failure or delay on the part of any of the parties to this Agreement relating to the exercise of any right, power, privilege or remedy provided under this Agreement shall operate as a waiver of such right, power, privilege or remedy or as a waiver of any preceding or succeeding breach by the other party to this Agreement. No single or partial exercise of any right, power, privilege or remedy shall preclude any other or further exercise of such or any other right, power, privilege or remedy provided in this Agreement all of which are several and cumulative and are not exclusive of each other or of any other rights or remedies otherwise available to a party at law or in equity.
   10. Neither party shall bring any proceedings against the other in respect of this Agreement unless the party intending to bring proceedings first makes a bona fide offer to participate immediately in a mediation conducted by a mutually agreed third party or a certified mediator and the other party declines the mediation.
   11. This Agreement contains the entire agreement between the parties in relation to the subject-matter of this Agreement.
   12. This Agreement and any dispute or claim arising out of or in connection with it shall be governed by and construed in accordance with English law and the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of this Agreement.

**SCHEDULE 1**

**COMMISSIONED WORK**

**Quentin Budworth: Exact Locations TBC but in the wider Hull communities and in the trail also.**

The Contributor shall create the Hullywood icons photos and subsequent projections recreating iconic film scenes with people who live and work in Hull, which will be created and then projected on 29/30 December and subsequently on 1st and 2nd January 2017 and, 5,6 and 7th January 2017 as part of the Made in Hull event (the “Event”).  The Commissioned Work for the roaming (for the first 2 hours out in the communities of Hull, covering a different location each night but then coming into the city for the final hour and shall be projected on the Marina area and the Land of Green Ginger area, with exact locations to be determined.

Contributor shall create, design and produce the content and supply all technical equipment and personnel to project the images taken for the Commissioned Work for the duration of the Event ie a minimum of 7 days between 29th December to the 7th January (inclusive) between the hours of 4pm and 9pm

In addition, Contributor shall spend agreed on site time with technical suppliers and the Event’s creative team to ensure smooth delivery and make any minor on site changes required (all must be contracted or sign NDAs prior to site visits and this is to be arranged by the Contributor).

**SCHEDULE 2**

**TIMETABLE AND FEE**

**1. TIMETABLE**

Payment to the Contributor as outlined in Clause 2 below shall be in consideration for the creation of content, content delivery on time and to stipulated agreed sign off points no later than the following dates (such dates to be revised with the mutual agreement of the parties to this Agreement):

* + Review Point: 7th November 2016
  + Sign off point one: w/c 21st November 2016
  + Sign off point two: w/c 6th December 2016
  + Final agreed delivery or sign off if above not signed off: 12th December 2016
  + Delivery of content as above not reached: TBC on discussion.

**2. THE FEE**

Hull 2017 shall pay the Contributor a fee of £1500 exclusive of VAT (the “**Fee**”) in accordance with the following payment timetable:

**Payment Timetable**:

|  |  |
| --- | --- |
| **Amount** | **Date/Event** |
| £750 | Execution of Agreement |
| £750 | 15 January 2017 |

**2. EXPENSES**

**[INSERT ANY AGREED EXPENSES]**

|  |  |
| --- | --- |
| Niccy Hallifax  Producer  **For an on behalf of  Hull UK City of Culture 2017** | ) ) ) ) ………………………………………………… |
| Fran Hegyi  Executive Director  **For an on behalf of  Hull UK City of Culture 2017** | ) ) ) ) ………………………………………………… |
| Signed by **[Name of Authorised Signatory]**  duly authorised for and on behalf of  **[Quentin Budworth]** | ) ) ) ………………………………………………… |