**HULL UK CITY OF CULTURE 2017**

**Invitation to Tender**

**(Part 1 – Instructions to Tenderers)**

**Appendix 1 – Draft Supplier Agreement**

**Marketing Support Services for Volunteering Programme 2018-20**

**Tender Return Date and Time (DEADLINE):**

**17:00 – Wednesday 9 May 2018**

[shaun.crummey@hull2017.co.uk](mailto:procurement@hull2017.co.uk)

**Hull UK City of Culture Ltd.**

**Pacific Exchange**

**40 High Street**

**Hull**

**HU1 1PS**

[Insert Supplier Name]

[Insert address 1]

[Insert address 2]

[Insert address 3]

[Insert address 4]

**Letter of Appointment**

**Marketing Support Services for Volunteering Programme 2018-2020**

[Insert date]

Dear [Insert name],

This Letter of Appointment together with the terms and conditions attached at schedule 6 (“**Terms and Conditions**”) set out the terms of the appointment of [Insert Supplier Name] (Company number XXXXXXXXXXX) whose registered office is at [insert supplier address] (the “**Supplier**”) by Hull UK City of Culture Ltd.(**Hull 2017**) (company number 9106231, charity number 1162199) whose registered office is Pacific Exchange, 40 High Street, Hull, HU1 1PS (“**Hull 2017**”) as a supplier for marketing support services (the “**Supplies**”) for the Hull 2017 volunteering programme.

Terms which are not defined in this Letter of Appointment shall bear the meanings given to them in the Terms and Conditions.

1. **Term:** The appointment to the role shall take effect from the date of this letter and shall continue for a period of 20 December 2017 to 31 March 2018 (4 months) unless terminated earlier in accordance with the Terms and Conditions.

2. **Goods & Services:** The Supplies to be provided by the Supplier are set out at schedule 2.

3. **Fees:** The price chargeable for the Supplies shall be calculated on the basis of the rate card attached at schedule 3 and will be paid in accordance with the Terms and Conditions.

4. **Terms of Business:** The Terms and Conditions, set out in schedule 6, which apply to the provision of the Supplies together with all schedules, appendices, recitals contracts and Purchase Orders thereto, together with this letter of appointment, constitute the entire agreement between the parties with the regards to the Supplies, to the exclusion of all other terms and conditions.

5. **Warranties:**

5.1 The Supplier warrants and undertakes to Hull 2017 that:

5.1.1 it has full power and authority to enter into this agreement; and

5.1.2 it shall not, in entering into this agreement or in performing its obligations hereunder be in breach of, or be prevented or delayed in the fulfilment of its obligations by;

(a) any provision of its memorandum and articles of association, by-laws or equivalent constitutional elements

(b) any contractual or other obligation owed by it to any other person; or

(c) any laws or regulations in its jurisdiction of incorporation or any other order, decree or judgement of any court or any government entity

5.2 All warranties and undertakings shall, unless otherwise expressly stated, continue in full force effect during the term of the agreement

5.3 In the event of a conflict between the terms of this Letter of Appointment and the Terms and Conditions, this Letter of Appointment shall prevail.

6. **Change Control:** No amendment to this Letter of Appointment shall be valid unless it is in accordance with the Change Control Procedure set out in schedule 5 and also accompanied by a completed Annex A: Contract Amendment, and duly executed by or in behalf of both parties.

Signed and agreed

**Name:** [insert name] **For and on behalf of:** [insert supplier name]

**Signature:**

**Name:** [insert name] **For and on behalf of:** Hull UK City of Culture Ltd.

**Signature:**

**Dated:**

**Letter of Agreement**

**Marketing Support Services for Volunteering Programme 2018-2020**

**SCHEDULE 1**

**Call Off Procedures**

**1. Contractual arrangements**

This Letter of Appointment does not constitute a commitment by Hull 2017 to place a contract for any goods and or services with the Supplier.

Contracts for the Supplies will be placed as per the call off process below and will be subject to a separate contract and or Purchase Order.

**2. Call off timetable**

A call off contract can be entered into at any time during the period of the Letter of Appointment up until the date of expiry and can run beyond the date of expiry.

A call off contract **cannot** be entered into after the Letter of Appointment has expired.

**3. Call off process**

Contracts for Supplies will be placed with contractors as per the process below.

**3.1 Contract Award**

Contracts for Supplies of H17\_026 Signage & Dressingwill be awarded by either:

**3.1.1 Direct Award**

Hull 2017 reserve the right to directly award contracts to suppliers on the basis of most economically advantageous tender (“MEAT”). The following award criteria will be used:

|  |  |
| --- | --- |
| **Criteria** | **Weighting** |
| Price | 30% |
| Quality | 30% |
| Deliverability | 40% |

OR

**3.1.2 Mini Competition**

Some contracts will be awarded following mini competitions issued to framework suppliers. These will include the evaluation criteria for the particular contract and will take the form of either

**3.1.2.1** A request for quotation

OR

**3.1.2.2** A tender process

OR

**3.1.2.3** An invitation to pitch

**Letter of Agreement**

**Marketing Support Services for Volunteering Programme 2018-2020**

**SCHEDULE 2**

**Specification**

Following the appointment of a supplier, contracts for individual events will be awarded following mini competitions, though Hull 2017 reserves the right to direct award to a single supplier contracts.

Following mini competitions or direct awards, suppliers will be appointed to deliver single events or groups of events. Working closely with and under the direction of senior Hull 2017 staff suppliers will be contracted to deliver the signage, on time and within the agreed budget, they will be required to deliver a range of services which may include (but not be limited to);

**1.1 Marketing Materials**

|  |  |
| --- | --- |
|  | **Specification** |
| 1.1.1 | **SIGNAGE – SELECTION CENTRES/TRAINING CENTRES**  Copywriting, design and print required:  5mm foamex, digitally printed 1 side in full colour, 1500x1500mm x 80 panels of different designs. Please specify if the panel will be in 1 piece.  Packed suitably and delivered to 1 UK address |
|
|
| 1.1.2 | **NEWSLETTER**  Copywriting, design and print required:  2 x newsletters to be produced in 2018/19 and 2 x in 2019/20.  A4 4pp full color printed on 150gsm uncoated stock. Sending it to 2,500 via the post (second class postage in A4 envelope with address sticker lables), and also creating a PDF version for emailing. |
|
|
| 1.1.3 | **EMAIL COMMUNICATION**  Copywriting, HTML design required:  Bi monthly e-newsletters to be sent out via Better Impact system. Also to cover any specific “design” support that might be needed for specific invitations etc. make provision for up to 6 key events throughout the contract term. |
| 1.1.4 | **WORKBOOKS**  Copywriting, design and print required:  x3 28pp A4 portrait self cover, full colour throughout, 170gsm uncoated.  Print 500 of each (1,500 total) for Wave 5 (2018).  Print 500 of each (1,500 total) for Wave 6 (2019).  Print 500 of each (1,500 total) for Wave 7 (2020).  Packed suitably and delivered to 1 UK address |
| 1.1.5 | **HANDBOOKS**  Copywriting, design and print required:  x3,000 36pp A6 portrait uncoated 250gsm stock, wirobound handbook including option for a fold out map at the back.  Packed suitably and delivered to 1 UK address |
| 1.1.6 | **TEMPLATES**  Design and print required:  x10 A4 double-sided full colour electronic templates for a variety of uses such as training guides, workshops, masterclass sessions. Available in editable PDF, word and PP format.  Packed suitably and delivered to 1 UK address |
| 1.1.7 | **FOLDERS**  Design and print required:  x500 350gsm silk, oversize A4 landscape, 10mm approx spines - full colour throughout and matt laminated, pocket glued 2 positions with elastic closures applied into the back cover  Packed suitably and delivered to 1 UK address |
| 1.1.8 | **FILM**  Copywriting, design and animation required:  Minimum of 30 frame animated film to promote volunteer recruitment in 2019 (wave 6). Brief to be discussed in consultaion with the volunteering team and all assets such as imagery and stats to be provided. |
| 1.1.9 | **ACCOUNT MANAGEMENT SERVICE**  Provide an effective and transparent account management service for 2018-2020. This service should form an extension of the internal team to help prompt/plan/deliver various marcomms objectives and campaigns for the volunteering programme as a whole. This should also include media buying services.  This should also include upto 30 days of support within the contract period to include but not limited to:   * Content production to populate online information hubs (e.g. Better Impact system). * Identifying and maximising opportunities for PR exposure in line with key campaign moments. * Writing additional training content for masterclass sessions. |
| 1.1.10 | **PROMOTIONAL LITERATURE**  Copywriting, design and print required:  x5,000 A6 postcards – 300gsm, silk, full colour, double-sided  x5,000 A5 flyers – 170 gsm, silk, full colour, double-sided  x200 A3 posters and x300 A4 posters – 170 gsm silk full colour, single-sided  Packed suitably and delivered to 1 UK address |

**Official Suppliers & other Frameworks**

Hull 2017 reserves the right to require Framework Suppliers to include Official Suppliers or other suppliers approved by other framework agreements in their supply chain.

**Letter of Agreement**

**Marketing Support Services for Volunteering Programme 2018-2020**

**SCHEDULE 3**

|  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- |
|  | **APPENDIX 3** |  |  |  |  |  |  |
|  | **Hull UK City of Culture 2017** |  |  |  |  |  |  |
| **Title:** | **Marketing Support Services for Volunteering Programme 2018-2020** |  |  |  |  |  |  |
|  |  |  | **Unit** |  |  | **VAT** |  |
| **Item Ref.** | **Item description** | **Quantity** | **Net Cost** | **NET cost** |  | **if applicable** | **Gross** |
| 1.1.1 | **SIGNAGE – SELECTION CENTRES/TRAINING CENTRES**  (see spec for full details) | 80 |  | £0.00 |  |  | £0.00 |
| 1.1.2 | **NEWSLETTER**  (see spec for full details) | 50 |  | £0.00 |  |  | £0.00 |
| 1.1.3 | **EMAIL COMMUNICATION** (see spec for full details) | 50 |  | £0.00 |  |  | £0.00 |
| 1.1.4 | **WORKBOOKS** (see spec for full details) | 50 |  | £0.00 |  |  | £0.00 |
| 1.1.5 | **HANDBOOKS** (see spec for full details) | 25 |  | £0.00 |  |  | £0.00 |
| 1.1.6 | **TEMPLATES** (see spec for full details) | 30 |  | £0.00 |  |  | £0.00 |
| 1.1.7 | **FOLDERS** (see spec for full details) | 30 |  | £0.00 |  |  | £0.00 |
| 1.1.8 | **FILM** (see spec for full details) | 30 |  | £0.00 |  |  | £0.00 |
| 1.1.9 | **ACCOUNT MANAGEMENT SERVICE**  (see spec for full details) |  |  | £0.00 |  |  | £0.00 |
| 1.1.10 | **PROMOTIONAL LITERATURE** (see spec for full details) |  |  | £0.00 |  |  | £0.00 |
|  |  |  |  | £0.00 |  |  | £0.00 |
|  | **Additional Items** |  |  |  |  |  |  |
|  |  |  |  | £0.00 |  |  | £0.00 |
|  |  |  |  | £0.00 |  |  | £0.00 |
|  |  |  |  | £0.00 |  |  | £0.00 |
|  |  |  |  |  |  |  |  |
|  |  |  | **Totals:** | **£0.00** |  | **£0.00** | **£0.00** |

**Letter of Agreement**

**Marketing Support Services for Volunteering Programme 2018-2020**

**SCHEDULE 3**

**Change Control**

**1. Principles**

**1.1** This document deals with the procedures that will be applied to all changes which may be required to the Agreement. This will ensure proper control and authorisation and consistency with the Agreement.

**1.2** Where either Party wishes to implement a change, such change shall only be effective if made in accordance with the procedures as set out at paragraph 2.

**1.3** Neither Party shall unreasonably withhold or delay its agreement to any change.

**1.4** Until such time as a change is made in accordance with the procedures, both Parties shall continue to perform their respective obligations under the Agreement as if the request or recommendation had not been made.

**1.5** Each Party shall bear its own costs in connection with the preparation and negotiation of any change, any work undertaken by the Supplier, its subcontractors or agents which has not been authorised in advance by the procedures set out herein shall be undertaken entirely at the expense and liability of the Supplier.

**2.**  **Procedures**

***Fast track***

**2 1** Any proposal for a change to this Agreement which the parties agree will have a financial impact to either party of less than £5000 may be made and accepted by the contract representatives without adhering to the timescales detailed below provided that the change to be implemented is documented in writing in accordance with Annex A.

***Normal***

**2.2** Any proposal for a change to this Agreement (other than those under paragraph 2.1 above) shall first be referred by the requesting Party to the other Party’s contract representative and shall result in either: no further action being taken if Hull 2017 so decides; or a request to change the Agreement.

**2.3** Where a written request for a change is received, the other Party shall then, unless otherwise agreed, provide a written response to the requesting party within fifteen (15) Business Days of the date of the request.

**2.4** Each written response from the Supplier shall contain the matters as set out in Annex A.

**2.5** During the ten (10) Business Day period following the Supplier’s submission of the written response or recommendation (or such other period as may be agreed between the Parties) the Parties shall discuss the proposed change.

**2.6** Discussion between the Parties following the submission of a written response or recommendation shall result in either:

**2.6.1** agreement between the Parties on the change including signing a form as set out in Annex A and details of the date upon which the changes are to take effect (**the change effective date**), or

**2.6.2** no further action being taken on that proposed change.

**2.7** In the event of any dispute under this Schedule, the provisions of the Agreement shall apply.

**2.8** A signed document in the form of Annex A shall constitute a change to the Agreement in accordance with the variations Clause of the Agreement

**Annex A Contract Amendment**

|  |  |
| --- | --- |
| **Amendment number** [ ] | **Dated** [ ] |
| **Hull 2017** whose registered number is 9106231 | [Supplier] whose registered number is [ ] |
| WHEREAS the parties entered into an agreement for the provision of goods and/or services dated [ ] (the ***Original Agreement***) and now wish to amend the Original Agreement. Save as herein amended all other terms and conditions of the Original Agreement shall remain in full force and effect | |
| **Title of the change** [ ] | **Originator** [ ] |
| **Effective date** [ ] | **Date of the request or recommendation for the change** [ ] |
| **Full details of the change including:**   * Any specifications * The documentation to be provided * The training to be provided |  |
| **The price if any of the change (and, if appropriate, a schedule of payments** |  |
| **Timetable for implementation** |  |
| **Details of the likely impact, if any, of the change on other aspects of the Agreement including but not limited to:**  • the terms of this Agreement  • the personnel to be provided  • resource requirements for  Hull 2017  • Service Levels |  |
| **Signed for and on behalf of Hull 2017**  Name:  Position:  Date: | **Signed for an on behalf of** [supplier]  Name:  Position:  Date: |

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**Marketing Support Services for Volunteering Programme 2018-2020**

**SCHEDULE 5**

**A LARGE-FONT VERSION IS AVAILABLE ON REQUEST.**

Definitions and interpretation

* 1. In these Terms:

**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;

**Contract** means the contract between Hull 2017 and the Supplier consisting of the PO (as accepted by the Supplier), these Terms and any other document(s) (or part(s) of document(s)) incorporated by reference and/or notified in writing by Hull 2017 to the Supplier;

**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 Contract and developed independently of the Supplier’s obligations under this Contract;

**Goods** mean any goods, products, materials and/or items (including any instalment(s) or any part(s) of them) that are the subject of the Purchase Order and/or to be supplied by or for the Supplier in connection with the Services;

**Hull 2017** means Hull UK City of Culture 2017 Limited, a company incorporated in England and Wales under number 9106231, whose registered office is at 40 High Street, Pacific Exchange, Hull HU1 1PS;

**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;

**Hull 2017 Property** means any personal property of Hull 2017 which the Supplier removes from the Premises in performing this Contract 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 Contract);

**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;

**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 Supplies are to be delivered, as specified in the PO (or advised by Hull 2017 to the Supplier within a reasonable time before such delivery);

**Price** means the price of the Supplies stated in the PO;

**Purchase Order** or **PO** means the document setting out the Supplies incorporating these Terms;

**Service Levels** means such specific standards of performance as may be incorporated in this Contract to be achieved by the Supplier in providing the Supplies;

**Services** means any work and/or services (including any part(s) of them) to be provided by or for the Supplier, as described in the PO, including such related and ancillary services as Hull 2017 may reasonably require from time to time;

**Supplier** means the person that is to provide the Supplies under this Contract, as specified in the PO and whose registered number, registered address and other details have been provided to Hull 2017;

**Supplier Personnel** means, in relation to the Supplier and to the extent (directly or indirectly) involved in the provision of the Supplies: (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 Contract (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;

**Supplies** means the Goods and/or the Services, depending on the context;

**Terms** means Hull 2017’s standard terms and conditions of procurement of goods and/or services as set out in this document;

**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 Contract (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 Contract; 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 Supplies (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 Contract, unless the context otherwise requires, any reference to:
     1. in relation to Supplies, **delivery** or **provision** or **supply** (and related words) shall be interpreted as a reference to the delivery, provision, supply, performance, sale, licence, lease, hire and/or loan of Supplies;
     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 Contract, that person’s successors, licensees and assigns;
     4. any document to which this Contract 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 Contract, 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 Contract shall be given in writing and, subject to any timeframes which are expressly set out, given in a timely manner. Where this Contract 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.

Offer and acceptance

* 1. Receipt of a PO by the Supplier constitutes an offer by Hull 2017 to obtain Supplies from the Supplier which shall be deemed to have been accepted on the Supplier’s either confirming its acceptance in writing duly signed by or on behalf of the Supplier or providing (or beginning to provide) all or part of the Supplies.
  2. This Contract applies to the exclusion of any terms and conditions submitted in any way by or on behalf of the Supplier in relation to the Supplies (**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.

Delivery

* 1. The Supplier shall deliver the Supplies in accordance with the instructions and date(s) specified in the PO (or, to the extent that no date or timescale is specified, then within 14 days after the date of the PO or at such other time as Hull 2017 may approve in writing or reasonably request). Time is of the essence for delivery of the Supplies. 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 Supplies (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 Supplies 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 ensure that:
     1. the Goods are marked and delivered in accordance with Hull 2017’s instructions and any applicable regulations or requirements of the carrier and properly packed and secured so as to reach their destination in an undamaged condition in the ordinary course; and
     2. each delivery of Goods is accompanied by a delivery note which shows the PO number, date of order, number of packages and contents and, in the case of part delivery, the outstanding balance remaining to be delivered.
  3. Unless otherwise agreed by Hull 2017 in writing, all Goods shall be delivered to the Premises during Business Hours with transportation charges and any other applicable charges pre-paid by the Supplier. Hull 2017 shall not be obliged to carry out any work to enable delivery of Supplies to take place. The Supplier shall off‑load Goods at its own risk, as directed by Hull 2017.
  4. Hull 2017 and, if applicable, the Supplier shall inspect the Goods as soon as practicable following delivery and agree an inventory of the quality and quantity delivered. Hull 2017 shall not be liable for any damage found on such inspection. If Hull 2017 in its reasonable opinion considers any of the Goods to be in an unsuitable condition or of the wrong quantity either on delivery or subsequently, Hull 2017 shall notify the Supplier, which shall promptly arrange the repair, remedy, correction or replacement of such Goods within 24 hours following the time of Hull 2017’s so notifying the Supplier. If the Supplier has not fully repaired, remedied, corrected or replaced (as appropriate) such Goods by the expiry of such 24-hour period, Hull 2017 shall be entitled to enforce Hull 2017’s remedies under clause 11.
  5. Unless otherwise specified, the Supplier shall be responsible for installing, commissioning and decommissioning the Goods.
  6. Hull 2017 shall not be deemed to have accepted the Goods until it has had a reasonable period of time to inspect them following delivery or, if later, within a reasonable period of time after any latent defect in them has become apparent.
  7. The Supplier shall give Hull 2017 prior written notice of the delivery under this Contract of any Goods having a hazard to the health and safety of persons or property, identifying those hazards and giving full details of any precautions to be taken by Hull 2017 on the delivery of such Goods and their subsequent storage or handling. The Supplier shall notify Hull 2017 in writing of all requirements and restrictions imposed by governmental and other authorities or persons relating to the possession, use or onward supply of the Goods.
  8. 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 Contract 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).
  9. The Supplier shall comply, and shall ensure that the Supplier Personnel shall comply, with all applicable laws and regulations, including (where applicable) monitoring under the Safeguarding Vulnerable Groups Act 2006 and all reasonable conditions of access, including, where Hull 2017 considers appropriate, security screening and other requirements imposed by the Premises’ owner(s).

Title, risk and insurance

* 1. Where Hull 2017 is purchasing Goods:
     1. title to the Goods shall pass to Hull 2017 upon the earlier of delivery or the first payment by Hull 2017 in respect of the Goods and the Supplier shall take all reasonable steps to pass title in such Goods to Hull 2017, including, where requested, completing a vesting certificate; and
     2. risk in the Goods shall only pass to Hull 2017 upon delivery of the Goods in accordance with this Contract.
  2. Where Hull 2017 is hiring Goods:
     1. Title to the Goods indicated as being hired by Hull 2017 from the Supplier (**Hire Goods**) shall remain the property of the Supplier. Hull 2017 agrees to keep the Hire Goods free of any encumbrance and not to sell or otherwise deal with such Goods except in accordance with these Terms. The Supplier shall supply all associated plant, tackle, tools and documentation necessary for commissioning, use and decommissioning of the Hire Goods as set out in this Contract.
     2. The Supplier irrevocably permits Hull 2017, its contractors and other persons authorised by Hull 2017 to assist in organising and/or staging City of Culture to use the Hire Goods in accordance with the manufacturer’s instructions and recommendations during the hire period specified in this Contract (**Hire Period**) and subject to these Terms.
     3. The Supplier shall not be entitled to charge for: (i) damage or defect which is determined to pre-date Hull 2017’s use of the Hire Goods (whether or not identified during the course of the hand-over inspection); (ii) any modification of the Hire Goods which has been authorised by the Supplier; (iii) any damage resulting from improper design or manufacture; (iv) any damage resulting from any action, omission or breach by the Supplier or by any of the Supplier Personnel; and/or (v) any other damage which is not notified by the Supplier to Hull 2017 by the date of the final settlement invoice (together, **Excluded Damage**).
     4. Within 30 days after return of the Hire Goods to the Supplier, the Supplier shall deliver an invoice to Hull 2017 for the Supplier’s actual, reasonable and substantiated costs to repair, remedy or correct damage other than Excluded Damage, on the same rates (if any) as in this Contract. Such invoice shall be in full and final settlement for all Losses in connection with the Hire Goods.
     5. Hull 2017 shall have no liability or responsibility whatsoever for: (i) any loss or damage to, and any charges or other payments to the Supplier for, any property of the Supplier (including any Hire Goods) which occurs after the date due for collection by Supplier; or (ii) theft or loss of Hire Goods not caused by the negligence of Hull 2017.
  3. While in the Supplier’s or any Supplier Personnel’s possession or control, the Supplier shall accept risk in any Hull 2017 Property and such Hull 2017 Property shall be kept clearly identifiable as Hull 2017’s property, shall be fully insured by the Supplier, shall be safely stored apart from other property, shall be used solely for the purpose of performing this Contract and shall be returned to Hull 2017 immediately on Hull 2017’s written demand.
  4. The Supplier shall maintain complete and accurate books and records relating to this Contract until 31 March 2018.  The Supplier shall, on Hull 2017’s reasonable request, provide Hull 2017 or its nominee (**Hull 2017 Party**) with: (a) such financial information relating to the Supplier as the Hull 2017 Party may request; (b)  the right to review any and all of the Supplier's financial and production information; (c) access at all reasonable times to the Supplier's production, operational and other facilities for the purposes of conducting inspections; (d) the right, on reasonable notice to the Supplier and during the Supplier’s regular business hours, to inspect or audit the Supplier’s books and records to verify any matter relating to the Supplier’s performance under this Contract. Hull 2017 reserves the right to require the Supplier to enter into commitments entitling Hull 2017 to take possession of the Goods when Hull 2017 considers there is a risk of Supplier financial distress.
  5. The Supplier shall, without prejudice to its obligations under this Contract or otherwise at law, at its own cost effect and maintain for the term of this Contract (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 supplies equivalent to the Supplies) and with a reputable insurer to cover all risks of and incidental to this Contract, including (where applicable) risk in the Goods and in Hull 2017 Property while at the Supplier’s risk and including risk relating to the activities of the Supplier and of the Supplier Personnel. The Supplier shall, on request, supply to Hull 2017 a copy of each insurance policy effected under this Contract and shall ensure that each such policy is maintained in full force and effect.

Price and payment

* 1. The Price 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 the PO) 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 Supplies (including charges for packaging, packing, shipping, carriage, insurance, warehousing prior to delivery, and delivery to the Premises). Hull 2017 shall be entitled to any discount for prompt payment, bulk purchase or volume of purchase customarily granted by the Supplier. The Price is in full consideration of all Supplies 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 Contract, and are specifically inclusive of any and all (a) minimum amounts payable under such Union Rules (if any) as may apply to the Supplies, (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 Contract. 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 Contract or otherwise.
  3. Invoices may be rendered only after the Supplies (or, if the Supplies are to be provided in instalments, the relevant instalment of the Supplies) have, at the relevant time, been correctly provided in accordance with this Contract. Any acceptance by Hull 2017 of Supplies 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 Contract and shall negotiate in good faith with Hull 2017 to reach settlement and invoicing of such amount.
  4. If any sum under this Contract 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 Supplies, even if Hull 2017 is in breach of this Contract (including for non‑payment). No payment shall be made for rejected Goods.

Quality of Supplies and Supplier Personnel

* 1. The Supplier warrants, represents and undertakes to Hull 2017 that the Supplies will:
     1. be of satisfactory quality, design, material and workmanship;
     2. be fit for any purpose held out by the Supplier or described in this Contract or made known to the Supplier in writing at the time when the PO is placed;
     3. be free from defects and any third-party lien, charge, claim, title, interest or other encumbrance;
     4. conform in all respects with the PO (or, where applicable, sample approved in writing by Hull 2017) and all laws, orders, regulations, bye-laws, codes of conduct and best practice that are applicable to the Supplies;
     5. 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 Supplies;
     6. not contain anything that is offensive or harmful, nor bring (nor will the Supplier bring) Hull 2017 or City of Culture into disrepute; and
     7. meet the Service Levels.
  2. Hull 2017’s rights under this Contract are in addition to the statutory provisions implied in favour of Hull 2017 by the Sale of Goods Act 1979 and/or the Supply of Goods and Services Act 1982.
  3. Where the Goods are hired to Hull 2017, the Supplier shall enforce all manufacturers’ warranties applicable to such Goods for the benefit of Hull 2017 and shall reimburse Hull 2017 for any costs paid by Hull 2017 for repair of any such Goods, to the extent such repair is covered by any manufacturer’s warranty or by or through any insurance claim.
  4. 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 policy (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 Supplies 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 Supplies).
  5. The Supplier is acting, in the performance of this Contract, as an independent contractor. The Supplier shall, to the extent required under this Contract, 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 Contract) 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 Contract. The Supplier shall inform all Supplier Personnel supplied to perform the Supplier’s obligations under this Contract that they are not entitled to any employee benefits offered by Hull 2017.
  6. The Supplier shall, promptly at Hull 2017’s request, withdraw and/or replace any Supplier Personnel assigned to perform the Supplies if any such person is, in Hull 2017’s reasonable opinion, not supplying the Supplies in accordance with the obligations under this Contract.

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 Supplies.
  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 Supplies 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 Contract and is entitled to grant, assign and confirm (free from any encumbrance) the rights expressed to be granted, assigned and confirmed under this Contract (**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 Supplies) 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 Contract (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.

Data protection

* 1. The Supplier shall, to the extent it processes any Personal Data on behalf of Hull 2017:
     1. act only on instructions from Hull 2017; and
     2. 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.
     3. 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.
  2. .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.
  3. In this clause 8, Personal Data has the meaning given in the Data Protection Act 1998.

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.
  2. 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 Contract 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.

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 Supplies 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 Supplies to Hull 2017.
  3. The Supplier:
     1. shall, if instructed by Hull 2017 in writing, deliver the Supplies with no brands, logos, trade marks, trade names or other representations (whether relating to the Supplies, the Supplier, any Supplier Personnel or anyone or anything else) (**Branding**); and
     2. agrees that, without prejudice to any other remedies, where any Supplies are supplied with Branding (whether or not with the consent of Hull 2017), Hull 2017 may obscure, cover or remove any Branding and, where the Supplier is in breach of clause 10.3(a), the Supplier shall reimburse the reasonable costs of Hull 2017 incurred pursuant to this clause 10.3(c)
  4. In order to protect the legitimate business interests of Hull 2017, neither the Supplier nor any Supplier Personnel, either during the continuance of this Contract or at any time within three months after the expiry or earlier termination of this Contract (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 Contract.
  5. Hull 2017 shall have the right to enforce the provisions of clauses 9 and 10, and the Supplier acknowledges that the provisions of such clauses 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.

Remedies and limitation of liability

* 1. If this Contract is terminated pursuant to clause 14.2 or the Supplier fails, in any material respect, to provide the Supplies (or any substantial part of them) in accordance with any of the provisions of this Contract or otherwise to comply with this Contract, Hull 2017 shall be entitled, without prejudice to its other rights or remedies (and whether or not all or any part of the Supplies have been accepted by Hull 2017):
     1. to rescind this Contract (in whole or in part);
     2. to reject the Supplies (in whole or in part) and, where possible, either: (i) to return the rejected Goods to the Supplier at the risk and cost of the Supplier on the basis that a full refund for such Goods (including the cost of any such return) shall be promptly paid by the Supplier, Hull 2017 not being obliged to return to the Supplier any packaging or packing materials for such Goods; or (ii) to request (orally or in writing) that the Supplier collect the Goods at the first reasonable opportunity, failing which Hull 2017 may dispose of them at its discretion and recover any reasonable costs of disposal from 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 Supplies; or (ii) to provide replacement Supplies and/or to carry out any other necessary work to ensure that the provisions of this Contract are fulfilled;
     4. to refuse to accept any further provision of the Supplies, 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 Supplies comply with this Contract;
     7. to order delivery of such undelivered completed Goods and/or partially completed Goods as Hull 2017 may consider necessary;
     8. to claim for Losses incurred in consequence of the Supplier’s breach of this Contract; and/or
     9. to order acceleration of the provision of the Supplies by any or all available means.
  2. Any remedy under this Contract 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 Supplies 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 Supplies 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 Supplies, 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 Contract 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 Contract or (b) to any equitable or injunctive relief whereby the grants, assignments and/or confirmations of rights, consents and/or waivers pursuant to this Contract and/or the use of the Supplies and/or Works could be restrained, restricted or otherwise affected.

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 Supplies or the possession or use of any Works supplied under this Contract;
     2. any actual or alleged breach of any other warranties, representations and undertakings contained in this Contract (including in clause 6.1);
     3. any liability under the Consumer Protection Act 1987 (or equivalent legislation in any jurisdiction other than England and Wales) in respect of the Goods or arising as a consequence of a breach of clause 3.8;
     4. any liability arising as a consequence of a breach of clause 6.5;
     5. any act or omission of the Supplier or any Supplier Personnel in connection with the Supplies and/or their provision; and/or
     6. any claim that the Supplies 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(d).
  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 Contract or otherwise towards satisfaction of the Supplier's liability under this indemnity.

Liability

* 1. Nothing in this Contract 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 clause12.2, neither party shall be liable to the other under this Contract 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 Contract or any breach of this Contract, even if it was advised in advance of the possibility of such loss or damage.
  3. Without prejudice to any other limitation or exclusion of liability under this Contract (but subject to clauses12.2, 13.1 and13.4), 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 Contract shall be limited to a sum equal to:
     1. for Hull 2017 to the Supplier, the Price; and
     2. for the Supplier to Hull 2017, 125% of the Price.
  4. 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 Contract) or would have been covered but for any act or omission of the Supplier in relation to such requirement.

Expiry, termination, cancellation and change

* 1. This Contract shall, unless terminated earlier in accordance with this Contract, 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 Contract with immediate effect by giving notice to the Supplier at any time if:
     1. the Supplier commits a material breach of this Contract 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 Contract, 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 Contract; or
     3. the Supplier is in breach of clause 3.8 or clause 6.5; 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 Contract 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 Contract (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 Contract shall be extended by a period equivalent to the period of postponement.
  5. Hull 2017 may cancel any PO in respect of all or part of the Supplies, defer the date of delivery and/or payment in respect of any Supplies ordered or reduce the volume or scale of any Supplies to be provided if the Supplier’s performance of this Contract 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 Supplies with a corresponding increase or reduction in the Price; or (b) cancel in full the quantities of Supplies in any PO.
  7. Following expiry of this Contract or cancellation under clauses14.4, 14.5 or 14.6 in respect of all or part of the Supplies by Hull 2017:
     1. Hull 2017 may return any Goods 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 Contract (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 Contract 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 Contract which is expressly or by implication intended to come into or continue in force by or after such expiry or termination, including clauses 1, 2.2, 4.4, 4.5, 5.3, 5.4, 6.5, 7, 8, 9, 10, 11, 12, 13, 14.7, 14.8, 14.9, 14.10, 15, 16, 17 and18.
  10. Except pursuant to clause 14.6 or as otherwise permitted under this Contract, if Hull 2017 requests a change to this Contract, the Supplier shall respond promptly to such request with a written proposal for provision of the revised Supplies and adjustment (if any) to the Price and/or to the timescales for performance specified in this Contract. No variation of this Contract 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 Supplies or additional Supplies unless such changes are so agreed.

Notices

* 1. Any notice to be given under this Contract 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 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, the Supplier’s postal address or email address specified on the Supplier Details Form; 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 transmitted by fax, at the time of successful transmission; or
     4. 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 Contract shall simultaneously be confirmed by another valid means of serving notice under this Contract),

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.

General

* 1. This Contract 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 Contract 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 Contract. Hull 2017 may assign, charge, novate or otherwise dispose of any or all of its rights under this Contract and/or sub-contract any or all of its obligations under this Contract to, or novate this Contract in favour of, any third party. The Supplier hereby consents to any such disposal, sub-contract or novation.
  2. This Contract 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 Supplies. Each party acknowledges that, in entering into this Contract, it is not relying on any representation or other assurance except as expressly set out or referred to in this Contract, provided that nothing in this Contract shall limit or exclude any liability for fraud. If the Supplies are to be provided in instalments, this Contract shall be treated as a single contract and not severable.
  3. No breach of any provision of this Contract 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 Contract shall operate as a waiver of that or any other right or remedy.
  4. If a provision of this Contract 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 Contract shall not be affected.
  5. Nothing in this Contract 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 Contract).
  6. In accordance with the Contracts (Rights of Third Parties) Act 1999 (Act) Hull 2017 may enforce any provision(s) of this Contract 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 Contract or to vary it in any way (except in relation to any right(s) conferred under this Contract 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 Contract is intended to confer a benefit on, or to be enforceable by, any person who is not a party to this Contract, whether under the Act or otherwise.

Disputes

The parties shall use reasonable endeavours to resolve any dispute or claim (contractual or non-contractual) arising in connection with this Contract (**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 Contract has already been terminated, the parties shall continue to perform their obligations under this Contract regardless of the nature of the Dispute.

Governing law and jurisdiction

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