

This agreement is made on the 2nd day of November 2016

### PARTIES

(1) **Louise Plant,** (the **Provider**), Yeomans, Colebrooke, Crediton, Devon, EX17 5JS

(2) **THE COUNTY COUNCIL OF DURHAM** whose office is at County Hall, Durham, DH1 5UL (the **Council**).

### BACKGROUND

The Council wishes to commission the Provider to deliver “**Ps – the same but different”, a sculptural installation** (“the Services”) across County Durham, as more particularly described in Schedule 1 to this Agreement and the Provider has agreed to provide the Services on the following terms and conditions.

**The Project:**

***Ps the same but different*** is a sculptural installation and associated engagement programme. Sculptor Louise Plant will create a new body of work, producing three new cast iron ‘Ps’ each approximately a metre cubed together with 100 smaller Ps to be used by participants in the engagement programme. The anthropomorphic form of the Ps embody a sense of adventure and freedom. Whilst similar in general appearance, each P is unique in form. Whilst they express individuality they grow in impact when grouped together. ‘Ps’ are interactive and accessible. Their changing colour, material, scale, shape and location changes the way viewers experience and engage with the ‘Ps’.  ‘Ps’ move away from the formal idea of static sculpture. They express a sense of fun; moving off the plinth and into public spaces. Alone and in groups their limbs reach out across and beyond themselves and relate to location. They are open to wide interpretation but can be seen to represent both the unique nature of every human at the same time as demonstrating the impact of working together.

The sculptures will be installed at four locations across County Durham. Locations have been selected with some seasonal context and to capitalise on the high levels of existing footfall in these locations. The installation will be accompanied by interpretive material inviting viewers to get involved. The exhibition will start in June 2017 on the Durham coast where the sculptures will be installed at Noses Point with the sea, coast and cliffs providing the background to the artwork. Between October 2017 and January 2018 the exhibits will be installed at Wharton Park, Durham, on the outskirts of the city centre where Durham Castle and Durham Cathedral will provide framing elements. The third location will see the Ps located in the centre of Bishop Auckland’s Market Place, outside Bishop Auckland Town Hall between February and April 2018. A busy, urban space in contrast to the other locations, this siting will enable the sculptures to be viewed within the context of Victoria civic architecture, modern shop fronts, pedestrians and passing traffic. The final location will be in Hamsterley Forest from April to June 2018.

There will be a structured programme of participation at each location that will enable more people to actively engage with the artworks.

### AGREED TERMS

**1. INTERPRETATION**

1.1 The definitions and rules of interpretation in this clause apply in this agreement.

**Bribery Act:** the Bribery Act 2010 and any subordinate legislation made under that Act from time to time together with any guidance or codes of practice issued by the relevant government department concerning the legislation;

**Council's Equipment:** any equipment, systems, cabling or facilities provided by the Council and used directly or indirectly in the supply of the Services.

**Council's Manager:** the Council's manager for the Services, appointed in accordance with clause 4.

**Deliverables:** all documents, products and materials developed by the Provider or its agents, subcontractors, consultants and employees in relation to the Services in any form, including computer programs, data, reports and specifications (including drafts).

**Intellectual Property Rights:** all patents, copyright and related rights, trade marks, service marks, trade, business and domain names, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for, and renewals or extensions of, such rights, and all similar or equivalent rights or forms of protection in any part of the world.

**Pre-existing Materials:**  where relevant all Documents, information and materials provided by the Provider relating to the Services which existed prior to the commencement of this agreement, including computer programs, data, reports and specifications.

**Prohibited Act:** Acts defined as such by the Bribery Act 2010.

**Proposal:** the information set out in Schedule 2 describing how the Provider proposes to carry out the Services.

**Services:** the services to be provided by the Provider under this agreement, as set out in Schedule 1 and the Provider's obligations under this agreement including the Proposal, together with any other services which the Council takes or agrees to take from the Provider.

**Sub-Contract:** any contract or agreement, or proposed contract or agreement between the Contractor and any third party whereby that third party agrees to provide to the Contractor the Services or any part of the Services, or facilities or services necessary for the provision of the Services or any part of the Services, or necessary for the management, direction or control of the Services or any part of the Services;

**Sub-Contractor:** the third parties that enter into a Sub-Contract with the Contractor;

**Provider's Equipment:** any equipment provided by the Provider or its subcontractors and used directly or indirectly in the supply of the Services.

**Provider's Manager:** the Provider's manager for the Services appointed under clause 3.3.

**VAT:** value added tax chargeable under English law for the time being and any similar, additional tax.

1.2 Clause, schedule and paragraph headings shall not affect the interpretation of this agreement.

1.3 A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality) and that person's legal and personal representatives, successors and permitted assigns.

1.4 The schedules and background form part of this agreement and shall have effect as if set out in full in the body of this agreement. Any reference to this agreement includes the schedules and background.

1.5 Words in the singular shall include the plural and vice versa.

1.6 A reference to a statute or statutory provision is a reference to it as it is in force for the time being, taking account of any amendment, extension, or re-enactment and includes any subordinate legislation for the time being in force made under it.

1.7 A reference to writing or written **i**ncludes faxes but not e-mail.

1.8 Where the words include(s)**,** including or in particular are used in this agreement, they are deemed to have the words without limitation following them. Where the context permits, the words otherand otherwiseare illustrative and shall not limit the sense of the words preceding them.

1.9 Any obligation in this agreement on a person not to do something includes an obligation not to agree, allow, permit or acquiesce to that thing being done.

1.10 References to clauses and schedules are to the clauses and schedules of this agreement.

**2. ENGAGEMENT**

2.1 The Provider warrants, undertakes and agrees to provide the Services to the Council on the terms and conditions of this Agreement.

2.2 The Provider warrants, undertakes and agrees to deliver the Services by the end of May 2013

2.3 This Agreement shall commence on the date of this Agreement unless otherwise agreed by the Parties and shall end on completion of the Services.

**3. PROVIDER'S RESPONSIBILITIES**

3.1 The Provider shall provide the Services, and where relevant deliver the Deliverables to the Council, in accordance with Schedule 1, and shall allocate sufficient resources to the Services to enable it to comply with this obligation. In the event of any conflict between Schedule 1 (Services) and Schedule 2, Schedule 1 shall have precedence.

3.2 The Provider shall meet any performance dates specified in Schedule 1.

3.3 The Provider shall:

1. co-operate with the Council in all matters relating to the Services

(b) subject to the prior written approval of the Council, appoint:

(i) personnel who shall be suitably skilled, experienced and qualified to carry out the Services.

(c) ensure that the Provider's Team use reasonable skill and care in the performance of the Services.

3.4 The Provider shall:

(a) observe, and ensure that all personnel observe, all health and safety rules and regulations and any other reasonable security requirements that apply;

(b) notify the Council as soon as it becomes aware of any health and safety hazards or issues which arise in relation to the Services; and

(c) before the date on which the Services are to start, obtain, and at all times maintain, all necessary licences and consents and comply with all relevant legislation in relation to:

1. the Services;
2. [the installation of the Provider's Equipment];
3. the use of all Documents, information and materials provided by the Provider or its agents, subcontractors, consultants or employees relating to the Services which existed prior to the commencement of this agreement; and

(iv) [the use of the Council's Equipment in relation to the Provider's Equipment].

3.5 The Provider acknowledges and agrees that:

(a) the Council is entering into this agreement on the basis of the Proposal, the Proposal is accurate and complete in all material respects, and is not misleading; and

(b) if it considers that the Council is not, or may not, be complying with any of the Council's obligations, it shall only be entitled to rely on this as relieving the Provider's performance under this agreement:

1. to the extent that it restricts or precludes performance of the Services by the Provider; and

(ii) if the Provider, promptly after the actual or potential non-compliance has come to its attention, has notified details to the Council in writing.

**4. COUNCIL'S OBLIGATIONS**

The Council shall co-operate with the Provider in all matters relating to the Services as set out in the Proposal and appoint the Council's Manager in relation to the Services, who shall have the authority contractually to bind the Council on matters relating to the Services;

**5. CHARGES AND PAYMENT**

5.1 In consideration of the provision of the Services by the Provider, the Council shall pay the fee.

5.2 The total fee for the Services shall be the amount set out in Schedule 2.

5.3 The Council shall pay each invoice which is properly due and submitted to it by the Provider, within 30 days of receipt, to a bank account nominated in writing by the Provider.

5.4 If the Council fails to pay any amount payable by it under this agreement, the Provider may charge the Council interest on the overdue amount from the due date up to the date of actual payment at the rate of 4% per annum above the base rate for the time being of Cooperative Bank plc. Such interest shall accrue on a daily basis and be compounded quarterly and the Council shall pay the interest immediately on demand.

5.5 Each party may, without limiting any other rights or remedies it may have, set off any amounts owed to it by the other party under this agreement against any amounts payable by it to the other party under this agreement.

5.6 The Council shall be entitled to withhold payment for any of the Services that have not been provided in accordance with the Agreement.

5.7 Where this Agreement is terminated for any reason before the Services are completed the fees shall be reduced pro rata to the extent to which the Services have been performed at the date of termination and the Provider shall reimburse the Council for any overpayment of fees that the Council may have made.

**6. QUALITY OF SERVICES**

6.1 The Provider warrants to the Council that:

(a) the Provider will perform the Services with reasonable care and skill and in accordance with generally recognised commercial practices and standards in the industry for similar services;

(b) the Services will conform with all descriptions and specifications provided to the Council by the Provider, including the Proposal; and

(c) the Services and Deliverables will be provided in accordance with all applicable legislation from time to time in force.

6.2 The provisions of this [clause 6](http://commercial.practicallaw.com/0-350-9991#a684319%23a684319) shall survive any performance, acceptance or payment pursuant to this agreement and shall extend to any substituted or remedial services provided by the Provider.

**7. INTELLECTUAL PROPERTY RIGHTS**

7.1 Copyright in the Artworks and all studies, drawings and designs shall remain with the Provider.

7.2 The Provider hereby grants the Council an irrevocable royalty free licence to use his Intellectual Property Rights in the Artworks in accordance with this Agreement.

7.3 The Council shall be entitled without payment or notification to the Provider to make (or to authorise others to make) any photographic representation, film, video or any other two dimensional representations of the Artworks (or studies, drawings and models of the Artworks released by permission of the Provider for such purposes) and to include this in any advertising, brochures or publicity material or film video or television broadcast for any purpose at the sole discretion of the Council, provided that such reproductions are not intended for commercial purposes seeking to generate a profit and provided that due acknowledgement is given to the Provider as author of the Artworks wherever and whenever such photographic representations are used.

7.4 Any reproductions of the Artworks intended for the purpose of generating commercial profit for the Council or such other body authorised by them shall be the subject of further negotiations between parties at that time.

7.5 should the Artworks created for the exhibitions at the project partner venues be shown in any other context, the partners will be credited as the original commissioning body in marketing and interpretation materials. Exact wording of the credit to be the subject of negotiation between parties at that time.

8. INDEMNITY

8.1 The Provider shall indemnify and hold the Council harmless from all claims and all direct, indirect or consequential liabilities (including loss of profits, loss of business, depletion of goodwill and similar losses), costs, proceedings, damages and expenses (including legal and other professional fees and expenses) awarded against, or incurred or paid by, the Council as a result of or in connection with:

(a) any alleged or actual infringement, whether or not under English law, of any third party's Intellectual Property Rights or other rights arising out of the use or supply of the products of the Services (including the Deliverables); or

(b) any claim made against the Council in respect of any liability, loss, damage, injury, cost or expense sustained by the Council's employees or agents or by any Council or third party to the extent that such liability, loss, damage, injury, cost or expense was caused by, relates to or arises from the provision of the Services or the Deliverables as a consequence of a breach or negligent performance or failure or delay in performance of this agreement by the Provider.

8.2 The provisions of this [clause 8](http://commercial.practicallaw.com/0-350-9991#a605566%23a605566) shall survive termination of this agreement, however arising.

**9 WARRANTY AND LIMITATION OF LIABILITY**

9.1 Each party warrants, undertakes and represents to the other party that it has and will during the term of this Agreement retain full power and authority to enter into this Agreement and perform the obligations undertaken by it.

9.2 Neither party excludes or limits its liability under this Agreement for death or personal injury caused by its negligence or fraudulent misrepresentation.

9.3 The Company warrants that it has obtained or will obtain prior to the commencement of the Events all necessary consents and permissions with respect to all the performances included in the Events. The Company shall indemnify and hold harmless DCC against all actions claims proceedings costs losses and damages and all legal costs or other expenses arising out of a breach of the warranty in this Clause 9.3.

**10. INSURANCES**

10.1 The Provider shall at its own expense take out and maintain all necessary insurances in respect of the Company’s liabilities pursuant to this Agreement with a reputable insurer or insurers including:

10.1.1 public liability insurance at a level of no less than £5 million for any one claim and no limit in the aggregate in the period of insurance; and

10.2 The Provider shall procure that a copy of the policy of insurance referred to in Clause 10 shall be produced to the Council together with evidence of payment of the premiums where applicable and the Company hereby warrants and represents to the Council that it shall not do anything or suffer anything to be done that would be likely to invalidate or otherwise affect any insurance policy taken out pursuant to this Agreement or which may increase the premiums payable thereunder or may imperil the renewal of such insurance.

**11. HEALTH AND SAFETY**

11.1 The Provider will ensure the planning operation and performance of any events including all actions of the artists during the performance of the events and any related installations and structures are carried out in accordance with the current requirements of legislation including all European Union Directives specifically but not limited to the Health And Safety At Work Etc Act 1974 and associated regulations, The Construction (Design and Management) Regulations 2007 and the Management Of Health And Safety At Work Regulations 1999.

11.2 The Provider will provide to the Council health and safety documentation consisting of method statements and suitable and sufficient risk assessments associated with the staging and delivery of any performance included in any events together with an overall health and safety plan in relation to all events and will ensure that all documentation is produced by suitably qualified and experienced health and safety consultant/advisers.

11.3 All documentation for each performance included in the events and provided under clause 11.2 above will be reviewed and must be deemed to be suitable and sufficient by the Council’s Corporate Health and Safety Unit at least 7 days prior to the performance of the event.

**12. CONFIDENTIALITY AND THE COUNCIL'S PROPERTY**

12.1 The Provider shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the Provider by the Council, its employees, agents, consultants or subcontractors, and any other confidential information concerning the Council's business or its products which the Provider may obtain. The Provider shall restrict disclosure of such confidential material to such of its employees, agents, consultants or subcontractors as need to know it for the purpose of discharging the Provider's obligations to the Council, and shall ensure that all employees, agents or subcontractors are subject to obligations of confidentiality corresponding to those which bind the Provider.

12.2 All Council's Equipment and all other materials, equipment and tools, drawings, specifications and data supplied by the Council to the Provider shall, at all times, be and remain as between the Council and the Provider the exclusive property of the Council, but shall be held by the Provider in safe custody at its own risk and maintained and kept in good condition by the Provider until returned to the Council. They shall not be disposed of or used other than in accordance with the Council's written instructions or authorisation.

**13. ANTI-BRIBERY**

13.1 The Provider shall:

(a) comply with all applicable requirements of the Bribery Act 2010 (“Relevant Requirements”);

(b) not engage in any activity, practice or conduct which would constitute an offence under sections 1, 2 or 6 of the Bribery Act 2010;

(c) promptly report to the Council any request or demand for any undue financial or other advantage of any kind received by the Provider in connection with the performance of this agreement;

13.2 The Provider shall ensure that any person associated with the Provider who is performing services in connection with this agreement does so only on the basis of a written contract which imposes on and secures from such person terms equivalent to those imposed on the Provider in this [clause 1](http://commercial.practicallaw.com/0-350-9991#a717429%23a717429)3(“Relevant Terms”). The Provider shall be responsible for the observance and performance by such persons of the Relevant Terms, and shall be directly liable to the Council for any breach by such persons of any of the Relevant Terms.

13.3 Breach of this clause 13 shall be deemed a material breach under [clause 14.1(b)](http://commercial.practicallaw.com/0-350-9991#a633572%23a633572)*)*.

**14. TERMINATION**

14.1 Without prejudice to any other rights or remedies which the parties may have, either party may terminate this agreement immediately on giving written notice to the other if:

(a) the other party fails to pay any amount due under this agreement on the due date for payment and remains in default at least seven days after being notified in writing to make such payment; or

(b) the other party commits a material breach of any of the terms of this agreement and (if such a breach is remediable) fails to remedy that breach within seven days of that party being notified in writing of the breach; or

(c) the other party repeatedly breaches any of the terms of this agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of this agreement; or

(d) the other party suspends, or threatens to suspend, payment of its debts, is unable to pay its debts as they fall due, admits inability to pay its debts or (being a company) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 (being a natural person) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 apply;

(l) the other party suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of its business; or

14.2 On termination of this agreement for any reason, the Provider shall immediately deliver to the Council:

(a) all copies of information and data provided by the Council to the Provider for the purposes of this agreement. The Provider shall certify to the Council that it has not retained any copies of information or data, except for one copy which the Provider may use for audit purposes only and subject to the confidentiality obligations in clause 11; and

(b) all specifications, programs (including source codes) and other documentation comprised in the Deliverables and existing at the date of such termination, whether or not then complete. All Intellectual Property Rights in such materials shall automatically pass to the Council (to the extent that they have not already done so by virtue of [clause 7.](http://commercial.practicallaw.com/0-350-9991#a997230%23a997230)*1*), who shall be entitled to enter the premises of the Provider to take possession of them.

14.3 If the Provider fails to fulfil its obligations under [clause 14.](http://commercial.practicallaw.com/0-350-9991#a660795%23a660795)2, then the Council may enter the Provider's premises and take possession of any items which should have been returned under it. Until they have been returned or repossessed, the Provider shall be solely responsible for their safe keeping.

14.4 On termination of this agreement (however arising) the accrued rights and liabilities of the parties as at termination, and the following clauses, shall survive and continue in full force and effect:

(a) clause 7;

(b) clause 8;

(c) clause 11;

(d) clause 13; and

(e) clause 26.

**15 REMEDIES**

If any Services are not supplied in accordance with, or the Provider fails to comply with, any terms of this agreement, the Council shall be entitled (without prejudice to any other right or remedy) to exercise any one or more of the following rights or remedies:

(a) to rescind this agreement; or

(b) to refuse to accept the provision of any further Services by the Provider and to require the immediate repayment by the Provider of all sums previously paid by the Council to the Provider under this agreement; or

(c) to require the Provider, without charge to the Council, to carry out such additional work as is necessary to correct the Provider's failure; and

(d) in any case, to claim such damages as it may have sustained in connection with the Provider's breach (or breaches) of this agreement not otherwise covered by the provisions of this [clause 12](http://commercial.practicallaw.com/0-350-9991#a784888%23a784888).

**16 FORCE MAJEURE**

The Council reserves the right to defer the date for performance of, or payment for, the Services, or to terminate this agreement, if it is prevented from, or delayed in, carrying on its business by acts, events, omissions or accidents beyond its reasonable control, including strikes, lockouts or other industrial disputes (whether involving the workforce of the Council or any other party), failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of Providers or subcontractors.

**17. VARIATION**

No variation of this agreement or of any of the documents referred to in it shall be valid unless it is in writing and signed by, or on behalf of, each of the parties.

**18. WAIVER**

* 1. Failure by either party at any time to enforce any one or more of the provisions of this Contract or to require performance by the other party of any of the provisions shall not constitute or be construed as a waiver of the provision or of the right at any time subsequently to enforce all terms and conditions of this Contract nor affect the validity of the Contract or any part of it or the right of the parties to enforce any provision in accordance with its terms.
  2. Failure to exercise, or any delay in exercising, any right or remedy provided under this agreement or by law shall not constitute a waiver of that (or any other) right or remedy, nor shall it preclude or restrict any further exercise of that (or any other) right or remedy.

**19. SEVERANCE**

19.1 If any provision of the Contract shall become or shall be declared by any court of competent jurisdiction to be invalid or unenforceable in any way, such invalidity shall not impair or affect any other provision all of which shall remain in full force and effect.

If any court or competent authority finds that any provision of this agreement (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed to be deleted, and the validity and enforceability of the other provisions of this agreement shall not be affected.

**20. ENTIRE AGREEMENT**

20.1 This agreement and any documents referred to in it constitutes the entire agreement between the parties and supersedes and extinguishes all previous drafts, arrangements, understandings or agreements between them, whether written or oral, relating to the subject matter of this agreement.

20.2 Each party acknowledges that, in entering into this agreement and the documents referred to in it, it does not rely on, and shall have no remedies in respect of, any representation warranty (whether made innocently or negligently) that is not set out in this agreement or those documents. Each party agrees that its only remedies in respect of those representations and warranties that are set out in this agreement or those documents (whether made innocently or negligently) shall be for breach of contract.

20.3 Nothing in this clause shall limit or exclude any liability for fraud.

**21 ASSIGNMENT**

21.1 Subject to any express provision of this Contract, the Contractor shall not without the prior written consent of the Council (not to be unreasonably withheld, delayed or subject to unreasonable conditions), assign all or any benefit, right or interest under this Contract or sub-contract the provision of the Services.

21.2 The Council shall be entitled to:

(a) assign, novate or dispose of its rights and obligations under this Contract either in whole or part to any contracting authority (as defined in The Public Contracts Regulations 2006); or

(b) transfer, assign or novate its rights and obligations where required by Law.

21.3 The Contractor shall remain responsible and liable for the acts and omissions of any other members of a consortium arrangement, sub-contractors, servants, agents and Employees as though they were its own.

**22. NO PARTNERSHIP OR AGENCY**

Nothing contained in this Contract, and no action taken by the parties pursuant to this Contract, will be deemed to constitute a relationship between the parties of partnership, joint venture, principal and agent or employer and employee. Neither party has, nor may it represent that it has, any authority to act or make any commitments on the other party’s behalf.

**23. RIGHTS OF THIRD PARTIES**

This Contract is enforceable by the original parties to it, by their successors in title and permitted assignees. Any rights of any person to enforce the terms of this Contract pursuant to The Contracts (Rights of Third Parties) Act 1999 are excluded.

**24. NOTICES**

24.1 Any notice required or authorised to be given under this Agreement may be served personally or by posting to the same address of the recipient as specified in this Agreement or to such other address for service as shall be notified by the recipient to the other party and shall in each case be deemed served four days after the date of posting.

**25. PREVENTION OF BRIBERY**

25.1 The Contractor:

25.1.1 shall not, and shall procure that any Employee shall not, in connection with this Contract commit a Prohibited Act;

25.1.2 warrants, represents and undertakes that it is not aware of any financial or other advantage being given to any person working for or engaged by the Council, or that an agreement has been reached to that effect, in connection with the execution of this Contract, excluding any arrangement of which full details have been disclosed in writing to the Council before execution of this Contract.

25.2 The Contractor shall:

25.2.1 if requested, provide the Council with any reasonable assistance to enable the Council to perform any activity required by any relevant government or agency in any relevant jurisdiction for the purpose of compliance with the Bribery Act;

25.2.2 within 5 Working Days of the Commencement Date, and annually thereafter, certify to the Council in writing (such certification to be signed by an officer of the Contractor) compliance with this clause 25 by the Contractor and all persons associated with it or other persons who are supplying goods or services in connection with this Contract. The Contractor shall provide such supporting evidence of compliance as the Council may reasonably request.

25.3 The Contractor shall operate and maintain throughout the Contract Period an anti-bribery policy (which shall be disclosed to the Council) to prevent any Employee from committing a Prohibited Act and shall enforce it where appropriate.

25.4 If any breach of clause 25.1 is suspected or known, the Contractor must notify the Council immediately.

25.5 If the Contractor notifies the Council that it suspects or knows that there may be a breach of clause 25.1, the Contractor must respond promptly to the Council's enquiries, co-operate with any investigation, and allow the Council to audit books, records and any other relevant documentation.

25.6 Without prejudice to any other rights and remedies available under this Contract, the Council may terminate this Contract by written notice with immediate effect if the Contractor or an Employee (in all cases whether or not acting with the Contractor's knowledge) breaches clause 25.1 and recover from the Contractor the amount of any loss suffered by the Council arising from the termination, including the cost reasonably incurred by the Council of making other arrangements for the provision of the Services and any additional expenditure incurred by the Council throughout the remainder of the Contract Period. [In determining whether to exercise the right of termination under this clause 25.6, the Council shall give all due consideration, where appropriate, to action other than termination of this Contract unless the Prohibited Act is committed by the Contractor or a senior officer of the Contractor or by an Employee not acting independently of the Contractor. The expression "not acting independently of" (when used in relation to the Contractor or a Sub-Contractor) means and shall be construed as acting:

25.6.1 with the Contractor; or,

25.6.2 with the actual knowledge of any one or more of the directors of the Contractor or the Sub-Contractor (as the case may be); or

25.6.3 in circumstances where any one or more of the directors of the Contractor or the Sub-Contractor ought reasonably to have had knowledge.]

25.7 Any notice of termination under clause 25.6 must specify:

25.7.1 the nature of the Prohibited Act;

25.7.2 the identity of the party whom the Council believes has committed the Prohibited Act; and

25.7.3 the date on which this Contract will terminate.

25.8 Any dispute relating to:

25.8.1 the interpretation of clause 25; or

25.8.2 the amount or value of any gift, consideration or commission,

shall be determined by the Council and its decision shall be final and conclusive.

25.9 Any termination under clause 25.6 will be without prejudice to any right or remedy which has already accrued or subsequently accrues to the Council.

25.10 For the avoidance of doubt, the Contractor shall be responsible for the acts and omissions of any Sub-Contractor and for the purpose of this clause 25, any act, default or omission of any Sub-Contractor shall be deemed to be an act, default or omission of the Contractor.

**26. GOVERNING LAW AND JURISDICTION**

This Contract shall be governed by the laws of England and shall be subject to the exclusive jurisdiction of the English courts

**SCHEDULE 1**

**The Services**

**1.0 Scope of work**

* To create a sculptural installation of 3 P sculptures each approximately 3m3 as s outlined in attached application to Arts Council England
* To create a body of approx. 100 small P sculpture for use in community and schools workshops and with members of the public
* To work with the curator to produce appropriate interpretive material including a film of the making process
* To provide information and support for additional fundraising work by project partners
* To provide information and support for marketing and PR of the exhibition
* To work with the Curator in adhering to the budget for the exhibition; securing competitive quotes for production of work
* To ensure that all publicity and promotion of the exhibition is approved by the project partners prior to circulation

### SCHEDULE 2

### Council (and project partner) Obligations:

The Council agrees that, in order to facilitate the delivery of the Commission, it will:

1. Provide general guidance and appropriate assistance to the Provider(s) throughout the whole Programme Period.
2. Co-ordinate meetings with the Provider(s) and project partners as and when appropriate.
3. Co-ordinate all press, PR and marketing of the Commission.
4. The Council will agree with the Provider(s) on the inclusion of all due and relevant credits on material relating to the Commission.
5. Provide payment to the Provider in accordance with the agreed schedule.
6. Will not knowingly take actions that will breach the terms and conditions of the external grant funding secured for this project.

**Fees available and payment schedule**

In consideration of the Commission to be provided by Provider(s), the Council agrees to pay the Provider a total fee of £15735 + VAT including expenses for this contract in full upon receipt of invoices.

Invoices should include the ‘Purchase Order Number’ and if appropriate VAT Registration Number and sent to:

Lucy Jenkins, Visual Arts Curator, Gala Theatre, Millennium Square, Durham DH11WA

Or,

Sent as an email attachment to lucy.jenkins@durham.gov.uk

### Invoice to be received as per payment schedule below:

|  |  |
| --- | --- |
| On receipt of signed contract | £5735 + VAT |
| On receipt of project update January 2017 | £5000 + VAT |
| On completion of first installation end of May 2017 | £5000 + VAT |

### Provider Obligations

The Provider(s) will develop and lead delivery of ('the Commission’) as described in Schedule 1 and undertake to develop and maintain relationships with all project partners. The Provider(s) will:

1. Deliver the Commission within the agreed allocated budget (tbc).
2. Support the set-up or installation and de-installation of the work in accordance with requirements.
3. Maintain communications with the Council including providing regular updates of progress with all aspects of the Commission as the work develops.
4. Make themselves available to attend meetings as and when required given reasonable notice.
5. Assist the Council as reasonably required in promoting the Commission through its press, PR and marketing activities.
6. Provide all necessary information and documentation to ensure the Commission is delivered in adherence with relevant health and safety requirements.
7. Take out and maintain or cause any Sub-Contractor to take out and maintain all necessary insurances.
8. Support the evaluation process throughout the project.
9. Will not knowingly take actions that will breach the terms and conditions of any external grant funding secured for this project.

**Timeframe**

Contract period: 2 November 2016 to 30 June 2018

Exhibition dates: End May - September 2017, East Durham Coast

End September 2017 – Early January 2018 Wharton Park, Durham

January – March 2018 Bishop Auckland

April to June 2018, Hamsterley Forest

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| Signed by **Louise Plant** |  | ................................................................. |
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| Signed by **Lucy Jenkins, Visual Arts Curator**  for and on behalf of THE COUNTY  COUNCIL OF DURHAM |  | 2 November 2016 |
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| Signed by **Robin Byers, Service Manager, Place and Experience** for and on behalf of THE COUNTY  COUNCIL OF DURHAM |  |  |
|  |  | 2 November 2016 |
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