**Appendix A – Terms and Conditions**

**CONTRACT NO. EC09/01/2596**

**CONTRACT**

**Pantomime Entertainment and Related Services including pre-sales marketing**

**between**

**FAREHAM BOROUGH COUNCIL**

**and**

**(2)**

**[ ]**

**THIS AGREEMENT** is made the day of 2018

**BETWEEN**

**(1) FAREHAM BOROUGH COUNCIL** of Civic Offices, Civic Way, Fareham, PO16 7AZ (the “Council”) **AND**

**(2) [ ]** whose registered office is at [ ] and whose registered company number is [ ] (the “Supplier”).

**WHEREAS** the Council wishes to engage the services of a Supplier to provide a pantomime and related services at Ferneham Hall, Fareham, as more particularly prescribed in the Specification, and has accepted a tender by the supplier for these services.

**IT IS HEREBY AGREED THAT**

1. This Agreement incorporates the following documents and constitutes the entire agreement between the parties relating to the Services:

1.1 Appendix A - the Terms and Conditions;

1.2 Appendix B - the Specification;

1.3 Appendix B1 – Technical Specification

1.4 Appendix C1 – Supplier Self Declaration

1.5 Appendix C2 - Supplier Response Proforma and Supplier’s Tender

1.6 Appendix C3 - the Pricing Schedule

1.7 Appendix E – Form of tender

1.8 Appendix F – Safeguarding Policy

1.9 eITT - the Invitation to Tender

and if there is any conflict or discrepancy between any of the Contract Documents the order of priority for interpreting the issue shall be the order of documents listed above.

1. In consideration of the payments to be made by the Council to the Supplier in accordance with this Agreement, the Supplier agrees with the Employer to provide the Productions in compliance with all the provisions of this Agreement.

**IN WITNESS** whereof the parties have executed this Agreement as a deed the day and year first before-written

**THE COMMON SEAL** of

**FAREHAM BROUGH COUNCIL**

was hereunto affixed in the presence of:

**Authorised Signatory**

**EXECUTED AS A DEED** by

**[ ]**

acting by:

|  |  |
| --- | --- |
| **Director**  | Signature |
|  | Name IN CAPITALS |
|  |  |
| **Director/Company Secretary\*** | Signature |
|  | Name IN CAPITALS |

*\* Please delete as applicable*

**Terms and Conditions**

**1. Definitions and Interpretation**

1.1 In this Agreement:

1.1.1 the masculine includes the feminine and the neuter;

1.1.2 the singular includes the plural and vice versa;

1.1.3 references to persons include firms, corporations, limited liability partnerships, charities and unincorporated associations;

1.1.4 references to any statute, enactment, order, regulation or other similar instrument shall be construed as a reference to the same as amended by any subsequent statute, re-enactment, order, regulation or instrument;

1.1.5 headings are included in this Agreement for ease of reference only and shall not affect its interpretation or construction;

1.1.6 references to clauses, appendices and the Schedules are, unless otherwise provided, references to clauses of and the schedules to this Agreement.

**1.2 “Appurtenances”** means all stage appliances, sound, lighting and technical equipment, machinery, ropes, gas, electric and water fittings, fire appliances, fixtures, fittings, stage properties, decorations, furniture and furnishings in or about the Theatre at the start of the Engagement Period.

**1.3 “Company”** means a full, efficient and suitable company of persons including the Principal Performer who together are capable of presenting the Production.

**1.4 “Competent Authorities”** the Local Licensing Authority, Fire Authority and any other body or Authority having jurisdiction or control over the Theatre and its use for the purpose of the Production.

**1.5 “First Performance Date”** means the first night of each year’s production under this agreement.

**1.6 "Insolvency Event"** means in respect of a person:

(a) other than for the purposes of a bona fide reconstruction or amalgamation, that person passing a resolution for its winding up, or a court of competent jurisdiction making an order for it to be wound up or dissolved, or that person being otherwise dissolved;

(b) the appointment of an administrator of, or the making of an administration order in relation to that person, or the appointment of a receiver or administrative receiver of, or an encumbrancer taking possession of or selling, the whole or any part of the entity's undertaking, assets, rights or revenue;

(c) that person entering into an arrangement, compromise or composition in satisfaction of its debts with its creditors or any class of them, or taking steps to obtain a moratorium, or making an application to a court of competent jurisdiction for protection from its creditors;

(d) that person being unable to pay its debts, or being capable of being deemed unable to pay its debts, within the meaning of section 123 of the Insolvency Act 1986; or

(e) that person entering into any arrangement, compromise or composition in satisfaction of its debts with its creditors;

**1.7 “Price”** is as set out in Appendix C3**.**

**1.8 “Principal Performer(s)”** means the named headline artist for each Production whose details are notified in writing in advance by the Supplier to the Council

**1.9 “Production”**means the Pantomime with the Principal Performer as produced by the Supplier.

**1.10 “Production Period”** means the period of each year’s Production being from and including December 2018 up to and including December 2019 (the “2018/2019 Production Period”)., from and including December 2019 up to and including December 2020 (the “2019/2020 Production Period”) and, subject to service of a notice by the Council in accordance with clause 3.1, from and including December 2020 up to and including December 2021 (the “2020/2021 Production Period”)

**1.11 “Retained Parts”** means the refreshment areas, bars, cloakrooms, food preparation area, storage spaces, the box office, the offices, the dimmer/switch room, lighting store, transformer room, sub-stage area, control boxes, laundry room, all back stage passages and staircases and the advertising spaces inside and outside the Theatre other than those spaces allocated for advertising the Production, the rehearsal rooms, front of house rooms and dressing rooms (other than such as are made available to the Supplier) boxes and stalls and all other parts of the Theatre not required for the proper presentation of the Production

**1.12 “Term”** means the period of two years beginning on 01.04.2018 (this may be subject to change) subject to extension. Pantomimes will be produced by the Supplier commencing 2018/19 season. Pantomime productions for 2019/20 (and optional 2020/21) will be agreed between the parties prior to the 2018/19 production.

**1.13 “Theatre”**means Ferneham Hall, Fareham.

**1.14**“**Venue Management”** means the General Manager of Ferneham Hall, Osborn Road, Fareham P016 7DB employed by Fareham Borough Council or any person acting on his behalf.

**1.15 “Week”**means a period from Monday to Sunday inclusive.

**2. Occupation**

2.1 The Supplier acknowledges that it shall occupy the Theatre as a licensee and no relationship of landlord and tenant is created between the Council and the Supplier;

**3. Engagement**

3.1 The Council engages the Supplier to provide the Production in the Theatre for the 2018/2019 Production Period and for the 2019/2020 Production Period in accordance with the provisions of this Agreement and the Council may by the provision to the Supplier of at least three months written notice require the Supplier to provide the Production in the Theatre for the 2020/2021 Production Period. The Council may, acting reasonably, after consultation with the Supplier, amend the dates of each Production Period. The Supplier shall provide each Production throughout each Production Period including Sundays,

3.2 The carrying out by the Supplier of its obligations under this Agreement shall without limitation and in all respects comply with:

 3.2.1 the Specification;

 3.2.2 the Supplier’s Tender;

3.2.3 this Agreement generally;

3.2.3 any variation of the Agreement made in writing by the parties;

3.2.4 the requirements of any relevant UK or EC statute, order, regulation, directives, standard, code of practice, or byelaw from time to time in force which is relevant to this Agreement; and

3.2.5 all professional standards which might reasonably be expected of the Supplier.

3.3 The Council will pay to the Supplier the Price due under and in accordance with the provisions of this Agreement.

3.4 The Supplier shall at his own expense provide all items shown in First Schedule of the Specification.

3.5 The Supplier agrees to provide the Council with a copy of the script for the Production no later than (4) weeks prior to the start of each Production Period together with full details of the scenery, lighting and sound plot requirements and of the Principal Performers and supporting cast.

3.6 This Agreement shall not preclude the right of the Council to let the Theatre for other performances or activities during the rehearsal or performance period subject to such letting being compatible with this Agreement.

3.7 This Agreement shall extend to all performances of the Production at the Theatre and such authorised rehearsals of the Production as may be agreed with the General Manager from time to time and shall continue in full force and effect unless determined in accordance with Clause 16 of this Agreement.

3.8 Time shall be of the essence. The General Manager must be notified and the Council’s consent obtained in writing to any extension of time.

3.9 If either party is unable to fulfill its obligations under this Agreement through

3.9.1 Strike, lockout by employees, war or civil commotion;

3.9.2 Cessation or serious interruption of land, sea or air communications or power supplies;

3.9.3 Exceptionally adverse weather, fire or other unavoidable cause

it shall immediately notify the other party and then the disabled party may decline to make or accept the provision of the Production. The Council will notify the Supplier within 30 days of the end of that period whether it requires the supply of the Production to be recommenced, varied or cancelled without further liability to either party and where the provision of the Production is recommenced the Agreement may be varied to extend the time for the supply by the period of disability.

3.10 At the completion of each Production Period the Supplier must promptly remove all material from the Theatre and leave it in a clean and tidy condition.

**4. Obligations of the Council**

4.1 To afford the Supplier the right to use such parts of the Theatre as are required for the proper presentation of the Production during each Production Period together with all Appurtenances and heating and lighting as available in the Theatre as agreed in advance.

4.2 Unless the prior consent of the Supplier has been obtained, use reasonable endeavours to prevent the Production or any part being photographed, filmed, audio or video recorded for any purpose, or being broadcast by any television or radio.

4.3To provide at its own expense sufficient technical and other staff as set out in SecondSchedule of the Specification.

4.4 To provide from the date of this Agreement an efficient box office.

4.5 To obtain and maintain in respect of the Theatre, but not the Production all necessary licences and permissions to enable the Production to be presented to the public at the Theatre.

4.6 To provide at its own expense throughout each Production Period, with the exception of the technical equipment supplied by the Supplier as detailed in First Schedule of the Specification, all existing sound and lighting equipment.

4.7 Any Performing Rights Society fees due will be agreed between the Council and Supplier and will be taken off the top of the box office receipts after the deduction of VAT.

**5. Presentation and Production**

5.1 The Supplier shall provide the Company and produce the Production at its own expense unless otherwise stated in the Agreement and shall effect the rehearsals and all the performances in respect of each Production Period.

**6. Conditions Relating to Performance**

6.1 All performances of the Production shall be presented in a professional manner. If at any time following commencement of the run any of the Principal Performers shall fail to appear the Supplier will replace such Principal Performer with another of equivalent professional standing and public recognition and appeal. Any such intended replacement shall be notified by the Supplier to the Council in writing in advance and must be agreed by the Council also in writing.

6.2 The Supplier shall ensure that at each performance the advertised Principal Performers and other artistes shall appear except when absent by reason of sickness or other good cause which has been notified in writing to and accepted by the Council and in the event of an understudy appearing the Supplier shall give such notice to the public as the Council reasonably requires.

**7. Obligations of the Supplier**7.1 The Supplier shall:

7.1.1 provide and produce the Production with the Principal Performers, artistes, scenery, properties, dresses and everything appertaining to the production suitable for production at the Theatre;

7.1.2 ensure that before the first performance of the Production at the Theatre of each Production Period all scenery and properties shall be properly fire-proofed to the satisfaction of the appropriate competent authorities;

7.1.3 provide a full risk assessment eight weeks prior to commencement of each Production Period to be approved by the Council.

7.2 Pay all costs and expenses of any nature or sort in respect of mounting, running and maintaining the Production throughout its run including any fees as well as the cost of repairs, renewals and replacement of all and any items or material required to maintain the production to performance standards.

7.3 Conduct the presentation of the Production so that nothing therein shall tend to lower the reputation of the Theatre or offend against any statute or the requirements of the Competent Authorities or endanger the continuance or renewal of any licences in respect of the Theatre.

7.4 Not do or allow to be done anything whereby any policy of insurance effected by the Council in respect of the Theatre may be invalidated or the premiums payable may be increased or the terms of insurance made more onerous.

**8. Supplier’s Insurance Obligations**

8.1 The Supplier agrees to take out and maintain with a reputable company public and employer’s liability and other insurances necessary to cover the risks contemplated by this Agreement including but not limited to those as are necessary in respect of any scenery, properties and effects brought into the Theatre and for liability arising out of any defect or accident caused whether directly or indirectly by such scenery properties and effects.

8.2 Without prejudice to the generality of the above clause, Public Liability insurance of at least two (2) million pounds shall be taken out by the Supplier and such additional insurance to insure against the Supplier’s potential liability under statutory and common law all persons employed by him in the Theatre or acting under his instructions or on his behalf and against risks of liability to third parties arising out of action or default of the Supplier its agents servants or others acting under his orders or control.

8.3 The Supplier will produce on demand for inspection by the Council all policies of insurance together with receipts or other evidence of the payment of the latest premium due under those policies.

**9. Supplier’s Indemnities in Favour of t****he Council**

9.1 Without prejudice to any rights or remedies that the Council may otherwise have either under the Agreement or otherwise, the Supplier shall indemnify the Council against all matters if any kind arising in contract, tort, statute or otherwise directly or indirectly out of the wrongful act, default, breach of contract or negligence of the Supplier its sub-contractors, employees or agents in the course of or in contemplation of this Agreement.

9.2 Without prejudice to the generality of the foregoing this indemnity shall extend to (and not be limited) in respect of

9.2.1 Death or injury to persons,

9.2.2 Damage to property,

9.2.3 Prevention of corruption,

9.2.4 The infringement of intellectual property rights,

9.2.5 Health and safety,

9.2.6 Race relations,

9.2.7 Data protection

9.2.8 Ombudsman investigations

9.2.9 All liability for costs, fees, damages, expenses or other money incurred as a result of any claim whatever by any visitor to the Theatre or person employed by the Supplier in connection with the presentation of the Production at the Theatre arising out of the action or default of the Supplier or any person acting under its orders and/or as a result of the breach by the Supplier of any of its agreements, obligations or warranties contained in the Agreement.

**10. Supplier’s Publicity Obligations**10.1 The Supplier shall: -

10.1.1 for the 2018/19 Production Period provide to the Council the programme, promotion and publicity items for the Production when requested by the General Manager;

10.1.2 for the 2019/20 Production Period and for the optional 2020/21 Production Period if it is taken up, provide to the Council the programme promotion and publicity items for each of these Productions no later than four (4) months before the start of the respective Production Periods; and

10.1.3 use its best efforts to secure a minimum of three appearances by principle cast members in such press radio and television interviews, photo calls or publicity appearances including Pantomime press launch and Fareham Town Centre light switch on as the Council and Supplier might arrange.

10.2 The Supplier agrees to ensure that all display advertisements and billing matter of every kind by the Supplier in respect of the Production shall include the Theatre’s name and address together with such telephone numbers and other information for bookings as are notified by the Council to the Supplier.

**11. Supplier’s Warranties, Intellectual Property Rights and Confidentiality**11.1The Supplier warrants that:

11.1.1 It is vested with all rights necessary to publicly perform the Production at the Theatre.

11.1.2 No performance of the Production will infringe any of the provisions of the Theatres Act 1968 or the copyright of any third party and that the Production is not defamatory of any person, firm or company.

11.2. This clause shall apply both during the Agreement and after its termination.

 **12. The Council’s Use of the Theatre**The Council reserves the following rights during the Production Periods:

12.1 to use the Retained Parts at all times and likewise on any days and at all times provided always that the same shall not interfere with the authorised rehearsals or performances of the Production but it is agreed that any damage to any of the Supplier’s properties caused during the use of the stage by the Council for its own purposes shall be made good by the Council at its own expense.

12.2 to advertise in and about the Theatre the presentation of forthcoming entertainments.

**13. Payment**

13.1 Schedule of payment dates whereby invoices can be initiated are detailed in Appendix 1 herein.

13.2 The Payment date defines how the contract price is payable. The Council shall make payment provided the supplier complies with the Agreement, within 30 days after receipt of an invoice submitted on or after a payment date.

13.3 The Supplier will send invoices directly to the Council’s Accounts Payable team at the address below.  ALL invoices presented will quote the relevant and valid Council Purchase Order number. The Supplier understands that failure to quote the Council's Purchase Order number will result in rejection of the invoice and may delay the payment process.

Accounts Payable
Fareham Borough Council
Civic Offices
Civic Way
Fareham
Hampshire
PO16 7AZ

**14. Sale and Price of Tickets**14.1 The prices of admission and current discounts for 2017 Pantomime are as set out in Appendix B - Specification. Prices for 2018/19 to be submitted as part of the tender response. Future prices to be agreed with the General Manager.

14.2 The number of seats to be issued free to the press and any other complimentary tickets shall be jointly determined by the General Manager and the Supplier.

**15.** **Limitation of Venue Management Liability**15.1 The Council shall be in no event liable for any loss or damage to any of the theatrical properties, equipment or other effects brought into or stored in the Theatre by the Supplier or any employee or Agent of the Supplier.

**16. Termination**16.1 The Council may by notice in writing terminate the Agreement in whole or in part if any of the events in clause 16.2 occur. No period of Notice shall be required but the notice shall state the date on which it is to take effect.

16.2 The events referred to in clause 16.2 are:-

16.2.1 The Supplier does not achieve the minimum mean percentage prescribed in KPI section of the Agreement such percentage calculated by reference to the survey of customer satisfaction referred to therein;

16.2.2 The Supplier has failed to produce the Production within the time specified in the Agreement

16.2.3 The Supplier has breached the Agreement in a way that the Council reasonably regards as irremediable which may include without limitation repeated and /or persistent remediable breaches of the contract.

16.2.4 The Council has given the Supplier one month’s notice to remedy a breach of the Agreement which can be remedied and the Supplier has failed to do so.

16.2.5 The Supplier has without reasonable cause failed to proceed diligently with or wholly suspends the performance of any part of this Agreement.

16.2.6 The Theatre licence shall be revoked by reason of any act or default of the Supplier.

16.2.7 The Supplier shall be subject to an Insolvency Event.

16.2.8 In the event of the termination of the Agreement the Council may engage another supplier to make the supply and the Supplier may be liable to pay the Council as a debt any extra cost that the Council incurs in so doing in excess of the price under this Agreement.

16.3 Any termination of this Agreement shall be without prejudice to any right which may have previously accrued to either party.

16.4 Without prejudice to its other rights and remedies whether under this Agreement or otherwise the Council may forthwith by notice in writing without liability to the Supplier instruct the Supplier not to provide any Production or instruct the Supplier not to provide any Production and terminate this Agreement subject to the following:

16.4.1 in respect of the 2018/2019 Production such notice must be served before 1 April 2018;

16.4.2 in respect of the 2019/2020 Production such notice must be served before 1 April 2019

16.4.3 in respect of the 2020/2021 Production such notice must be served before 1 April 2020; and

16.4.4 where the Council gives notice under clause 16.4.1 or 16.4.2 or 16.4.3 and the Supplier has incurred marketing costs in respect of the Production before the relevant notice is served and the Council agreed such marketing costs before they were incurred the Council shall pay the Supplier a sum equal to such agreed marketing costs actually incurred within [30] days of receipt of an invoice and the Supplier shall provide with the invoice supporting evidence to show how such marketing costs were incurred.

**17. Assignment and Subcontracting**

17.1 The Supplier shall not without the written consent of the Council assign or sub-contract the benefit or burden of the whole or any part of this Agreement. No subcontracting by the Supplier shall in any way relieve the Supplier of any of its responsibilities under this Agreement.

**18. Health and Safety**

18.1 The Supplier in performing its obligations under this Agreement shall have full regard to the safety of persons who may be affected in any way and shall comply with the requirements of the Health and Safety at Work Act 1974 and its subordinate regulatory framework and of any other Acts pertaining to the health and safety of persons.

18.2 Throughout the progress of carrying out its obligations under this Agreement the Supplier shall keep the Theatre and its environs in an orderly state and shall provide and maintain at its own expense any warning signs or safety fencing that may be required for the safety and convenience of the public and others.

**19. Equality, Ombudsman investigations and Human rights including Safeguarding**

19.1 The Supplier shall ensure that it acts at all times in such a manner as to comply with the Equality Act 2010 and the Human Rights Act 1998. Further the Service Provider shall seek to promote equality among its personnel and generally.

19.2 The Supplier shall set out its equal opportunities policy:

19.2.1 in instructions to those concerned with recruitment, training and promotion; and

19.2.2 in documents available to its personnel, recognised trade unions or other representative groups of its personnel; and

19.3 The Supplier shall, on request, provide the Council with examples of such instructions, documents, advertisements and literature as described in clause 19.2 above.

19.4 In the event of any finding of unlawful discrimination being made against the Supplier by any court or tribunal, or of any adverse finding in any formal investigation, the Supplier shall take appropriate steps to prevent repetition of the unlawful discrimination and shall, on request, provide the Council with details of any steps taken.

19.5 The Supplier shall take all reasonable steps to ensure that its personnel engaged in the performance of the Agreement do not act towards either Council staff or members of the public in a manner that could amount to harassment or discrimination on any of the grounds described in clause 19.1.

19.6 The Supplier shall to the extent relevant to this Agreement comply with the Council’s equal opportunities policy which may be consulted at http://www.fareham.gov.uk

19.7 If either the Council’s internal or external auditors or if the Commissioner for Local Administration (the Ombudsman) shall wish to investigate the Agreement then the Supplier shall provide all information access and co-operation as those persons shall reasonably require.

19.8 The Supplier agrees to comply with Fareham Borough Council’s Safeguarding Policy (Children & Vulnerable Adults) Procedures and Guidelines herein referred to as the Policy and available at [http://www.fareham.gov.uk/PDF/about\_the\_council/safeguardingpolicy.pdf](http://www.fareham.gov.uk/PDF/about_the_council/safeguardingpolicy.pdf%20) . In doing so, the Supplier will ensure that all its employees, servants, sub-contractors and/or agents, whether paid or voluntary, are familiar with the Policy and will operate according to the same and incorporate its requirements into existing work practices. The Supplier acknowledges that the Council may require any of the Supplier’s employees, servants, sub-contractors and/or agents providing services to the Council to provide written confirmation (signed declaration) of agreement to the Policy.

19.9 Prior to commencement of the Production, the Supplier may be required to provide written evidence of confirmation that it understands the statutory obligations placed upon the Supplier and its workforce in relation to the Council's Safeguarding Policy.

19.20 Prior to commencement of the Production, the Supplier must supply a complete list of the names of all its employees, subcontractors and/or agents, whether paid or voluntary, who will visit the site for the duration of the Production Periods. If the contract is on-going, the Supplier will provide the Council with an updated list on a quarterly basis.

19.21 The Supplier will not permit any of its employees, subcontractors and/or agents, whether paid or voluntary, to be dispatched to work inside a Council building unless the Supplier is satisfied that the person has been appropriately 'vetted' and considered 'appropriate' to work with children or adults who could be considered to be vulnerable.

19.22 The Supplier should ensure ‘vetting’ includes checks on identity, appropriate references, consideration of employment history and any gaps during interview and that applicants are asked to declare unspent criminal convictions in line with the Rehabilitation of Offenders Act.

19.23 The Supplier will ensure that, without exception, no employees, subcontractors and/or agents, whether paid or voluntary, will work within the theatre where there are children under the age of 18 without an adult who is responsible for those children being present.

**20. Prevention of Corruption**

20.1 The Council may terminate this Agreement by notice having immediate effect and recover from the Supplier the amount of any loss resulting from such termination if the Supplier, its personnel or any person acting on its behalf shall have:

20.1.1 offered, given or agreed to give to any person any gift or consideration of any kind as an inducement or reward for doing or forbearing to do or for having done or forborne to do any act in relation to this Agreement;

20.1.2 committed any offence under the Prevention of Corruption Acts 1889 to 1916 or the Bribery Act 2010; or

20.1.3 given any fee or reward the receipt of which is an offence under Section 117(2) and (3) of the Local Government Act 1972.

**21. Third Parties**

Any third party who is not a Party to this Agreement has no right under the Contracts (Rights of Third Parties) Act 1999 (“the Third Party Act”) to enforce any term of this Agreement notwithstanding that any such term may purport to confer or may be construed as conferring a benefit on such third party. This does not affect any right or remedy of such third party which exists or is available apart from the Third Party Act.

**22. Notices**

22.1 Any notice which either party may desire to or be required to give to the others shall be deemed to have been duly given if sent by pre-paid first-class post addressed to the party to be served at the address recorded in this Agreement and any such notice shall be deemed to have reached the party for whom it was intended 48 hours after the time it was posted.
 **23. Governing Law**23.1The validity construction and effect of this Agreement shall be governed by the law of England and Wales and the Supplier hereby irrevocably submits to the exclusive jurisdiction of the English courts.

23.2 This Agreement contains the entire understanding of the parties and no variation to the terms hereof may take place save where otherwise provided by this Agreement or by way of a written document duly signed on behalf of both parties.

**24. Confidentiality and Obligations Under the Freedom Of Information Act 2000 and Other Legislation**

24.1 For the purpose of this clause 24:

**“Codes of Practice”** means the Codes of Practice on the Discharge of Public Authorities’ Functions and on the Management of Records issued pursuant to Sections 45 and 46 of the FOIA and any similar or subsequent codes or guidance issued in relation to the Council’s FOIA obligations, as amended, updated and replaced from time to time;

**“Confidential Information”** means, subject to clause 24.16, information, data and material of any nature, and held in any form or medium, which either Party may receive or obtain in the performance of or in connection with this Agreement;

**“Data Subject”** has the same meaning as prescribed under the DPA;

**“Discloser”** means any party who discloses Confidential Information to the other party;

**“DPA”** means the Data Protection Act 1998, as amended from time to time, or as superseded by the General Data Protection Regulations 2016, or as otherwise superseded or amended by any subsequent statute, statutory provision or subordinate legislation;

**“EIR”** means the Environmental Information Regulations 2004 and any subsequent regulations issued from time to time;

**“FOIA”** means the Freedom of Information Act 2000, as amended from time to time;

**“Personal Data”** means data which relate to a living individual who can be identified

1. from those data, or
2. from those data and other information which is in the possession of, or is likely to come into the possession of, the data controller,

and includes any expression of opinion about the individual and any indication of the intentions of the data controller or any other person in respect of the individual.

**“Recipient”** means any party that obtains or receives Confidential Information from the Discloser.

24.2 Subject to the remainder of clause 24, the Parties undertake to keep strictly confidential and shall not disclose any such Confidential Information to any third party without the prior written consent of the other Party provided that:

24.2.1 the Recipient shall not be prevented from using any general knowledge, experience or skills which were in its possession prior to the commencement of this Agreement;

24.2.2 this clause 24.2 shall not apply to any Confidential Information which:

(a) is in or enters the public domain other than by breach of this Agreement or any other act or omission by the Recipient;

(b) is obtained by a third party who is lawfully authorised to disclose it;

(c) is authorised for release by the prior written consent of the Discloser;

(d) the disclosure of which is required to ensure the Council’s compliance with the FOIA and/or Codes of Practice; or

(e) where disclosure of Confidential Information is required pursuant to judicial, administrative, governmental or regulatory process in connection with any action, suit, proceedings or claim or otherwise by applicable law.

24.3 The Supplier acknowledges that the Council is subject to obligations under the DPA, FOIA and EIR and, to the extent that they apply to the Supplier’s performance of its obligations under this Agreement, the Supplier shall act in accordance with the DPA, FOIA, the Codes of Practice, the EIR and any other similar codes of practice or guidance notified to the Supplier from time to time.

24.4 The Supplier shall implement appropriate technical and organisational measures in such a manner that processing any Personal Data in relation to the delivery of the Services under this agreement will meet the requirements of relevant data protection legislation and ensure the protection of the rights of the Data Subject.

24.5 The technical and organisational measures implemented by the Supplier in accordance with clause 24.4 above must ensure a level of security appropriate to the risk, including inter alia as appropriate:

 24.5.1 the pseudonymisation and encryption of Personal Data;

24.5.2 the ability to ensure the ongoing confidentiality, integrity, availability and resilience of processing systems and services;

24.5.3 the ability to restore the availability and access to Personal Data in a timely manner in the event of a physical or technical incident; and

24.5.4 a process for regularly testing, assessing and evaluating the effectiveness of technical and organisational measures for ensuring the security of the processing.

24.6 Taking into account the nature of the processing of Personal Data, the Supplier shall assist the Council by appropriate technical and organisational measures, insofar as this is possible, for the fulfilment of the Council’s obligation to respond to requests for exercising the Data Subject’s rights with regard to their Personal Data, including:

 24.6.1 right of access;

 24.6.2 right to rectification;

 24.6.3 right to erasure;

 24.6.4 right to restriction of processing;

 24.6.5 right to data portability;

 24.6.6 right to object; and

 24.6.7 rights regarding automated individual decision-making.

24.7 Taking into account the nature of data processing and the information available, the Supplier shall assist the Council in ensuring compliance with the Council’s obligations in respect of:

 24.7.1 notification of a Personal Data breach to the supervisory authority;

 24.7.2 communication of a Personal Data breach to the Data Subject; and

 24.7.3 data protection/ privacy impact assessments and relevant consultation.

24.8 The Supplier warrants to the Council that it will process Personal Data in compliance with all Applicable Laws and without prejudice to clause 24.11.2 the Supplier shall indemnify the Council and keep the Council indemnified from and against all claims by any Data Subjects arising from or relating to any breach of this clause 24 by the Supplier.

24.9 In addition to clause 24.3 and without prejudice to clauses 24.4 to 24.8, the Supplier will take appropriate security measures to protect against unauthorised or unlawful processing or accidental loss or destruction of Personal Data, and shall comply with any instructions issued by the Council to the Supplier as to any appropriate standard for the management of Personal Data and information security management.

24.10 The Supplier agrees to notify the Council as soon as reasonably practicable upon becoming aware of any breach, or suspected breach, of any Applicable Law or other duty, stated or implied, relating to the confidentiality or security of Personal Data.

24.11 The Supplier agrees:

24.11.1 and consents to the Council providing or disclosing Confidential Information where such disclosure is necessary in order for the Council to discharge its obligations under the FOIA;

24.11.2 to process Personal Data only on documented instructions from the Council including with regard to transfers of Personal Data to a third country or an international organisation, unless required to do so by law, in which event the Supplier shall inform the Council of that legal requirement before processing, unless that law prohibits such information on important grounds of public interest;

24.11.3 to the Council publishing information provided to the Council by the Supplier in the Council’s Publication Scheme as required by the FOIA;

24.11.4 that the decision on whether or not any exemption applies to a request for disclosure made under the FOIA is a decision solely for the Council;

24.11.5 where the Council is managing a request for disclosure of information pursuant to the FOIA, the Supplier will cooperate with the Council and will respond to any request by the Council for assistance within 24 Working Days;

24.11.6 that, without prejudice to clause 17, the Supplier shall not engage a sub-contractor to undertake data processing without obtaining prior specific or general written authorisation of the Council. In the case that general written authorisation is given by the Council, the Supplier shall inform the Council of any intended changes concerning the addition or replacement of other sub-contractors and the Council will have the opportunity to object to such changes;

24.11.7 that, subject to written authorisation being granted under clause 24.11.6, where the Supplier wishes to engage a sub-contractor to undertake data-processing pursuant to the terms of this Agreement, the Supplier shall procure from such sub-contractor an undertaking to comply with the obligations of this clause 24 in a form approved by the Council and in the event that the sub-contractor engaged by the Supplier fails to fulfil its data protection obligations in accordance with such undertaking the Supplier remains fully liable to the Council for the performance of the sub-contractor’s obligations;

24.11.8 to take reasonable steps to ensure the reliability of any employees of the Supplier who have access to Personal Data and to ensure that persons authorised to process Personal Data have committed themselves to confidentiality or are under an appropriate statutory obligation of confidentiality;

24.11.9 that it will make available to the Council all information necessary to demonstrate compliance with all Applicable Laws relevant to Personal Data and allow for and contribute to audits, including inspections, conducted by the Council or by any person on the Council’s behalf.

24.12 The Council will consult with the Supplier prior to disclosing any of the Supplier’s Confidential Information pursuant to a request for such information under the FOIA.

24.13 The Supplier shall, at the choice of the Council, delete or return all Personal Data to the Council on request by the Council and in any event at the expiry of this Agreement and shall delete existing copies.

24.14 The provisions of this clause 24 shall survive and remain in full force upon and following the termination of this Agreement.

24.15 The Supplier shall indemnify and keep indemnified the Council against all actions, claims, demands, proceedings, damages, losses, charges, and expenses whatsoever in respect of any breach by the Supplier of this clause 24.

24.16 Notwithstanding any other provision of this Agreement the Parties acknowledge and agree that except for any information which is exempt from disclosure in accordance with the provisions of the FOIA the content of this Agreement is not Confidential Information.

24.17 The Supplier acknowledges that the Council may be subject to governmental codes of practice or guidance relating to a transparency agenda, including the policy of publishing contracts and all other documents relating to public procurement activity, such as for example the 27 February 2015 document “Local Government Transparency Code 2015”. Accordingly, and notwithstanding any other provision of this Agreement, the Supplier hereby gives its consent for the Council to publish this Agreement in its entirety (but with any information which is exempt from disclosure in accordance with the provisions of the FOIA redacted), including from time to time agreed changes to this Agreement. In relation thereto the Council may consult with the Supplier to inform its decision regarding any exemptions but the Council shall have the final decision in its absolute discretion. The Supplier shall assist and cooperate with the Council to enable the Council to publish this Agreement or any other documents relating to the public procurement activity from which this Agreement resulted in accordance with the aforementioned governmental transparency agenda.

**25. Fraud Prevention**

25.1 The Council shall be entitled to use all information provided by the Supplier or to which the Council has access to as a result of this Agreement for the purposes of preventing and detecting fraud and the Supplier shall provide all assistance necessary in that prevention and detection.

25.2 The Council is under a duty to protect the public funds it administers and consequently may use information about or in relation to the Supplier which it has acquired in relation to the Agreement or otherwise for the prevention and detection of fraud. Accordingly, the Council may share for such purposes all such information with other bodies responsible for auditing or administering public funds, including participation in the National Fraud Initiative, and the Supplier acknowledges and consents to such use and sharing of all such information. For the purpose of this Clause 25.2 the “National Fraud Initiative” means the sophisticated data matching exercise (or any similar successor exercise) run by the Audit Commission (or any successor body) under Part IIA of the Audit Commission Act 1998 which matches electronic data within and between participating bodies, including by way of example, local authorities, to prevent and detect fraud.

**26. Waiver**

26.1 The failure of either Party to insist upon strict performance of any provision of this Agreement, or the failure of either Party to exercise any right or remedy to which it is entitled under this Agreement, shall not constitute a waiver and shall not cause a diminution of the obligations established by this Agreement.

26.2 A waiver of any default shall not constitute a waiver of any subsequent default.

26.3 No waiver of any of the provisions of this Agreement shall be effective unless it is expressly stated to be a waiver and communicated to the other Party in writing in accordance with the provisions of clause 22.

**27. Dispute Resolution**

27.1 The Parties shall use their reasonable endeavours to resolve by agreement any dispute between them with respect to any matter relating to this Agreement.

27.2 In the event that a dispute cannot be resolved by agreement under clause 27.1 the Parties may either:

27.2.1 agree to refer the dispute to an independent person to be appointed by agreement between the Parties (and any charge made and expenses reasonably incurred by that independent person shall be paid by the Parties in equal shares, unless the independent person determines that a greater share should be borne by one of the Parties) and the independent person shall be provided with all necessary information and given assistance by the Parties in resolving their dispute, and may, by agreement between the Parties, be given the right to recommend or approve terms of settlement of the dispute; or

27.2.2 agree to refer the dispute for mediation arranged by the Centre for Dispute Resolution or another body established for the promotion of alternative dispute resolution.

**Appendix 1**

**Payment Schedule**

**Appendix 2**

**Key Performance Indicators (KPI’s)**

The Following Key Performance Indicators (KPI's) will be used to measure the cost, service and quality of the Pantomime provided by the successful tenderer. The results will form part of a post-production appraisal meeting between the Supplier and the Council. The minimum score the supplier should meet is 60%.

|  |  |  |  |
| --- | --- | --- | --- |
| **KPI**  | **Description** | **KPI Measure** | **Who measures?** |
| **Supplier Performance** | Quality of Performance: The quality of the production and use of Council facilities will be measured based on comparisons of historic shows staged at Ferneham Hall. Marketing Support:The quality of marketing support material and advertising channels provided by the Supplier to the Council.Collaborative Approach:The support and overall working relationship provided by the Supplier to the Council before, during and after the production run. | As a percentage *(by Ferneham Hall staff)* | The Council |
| **Commercial Performance** | The Council (Ferneham Hall) will monitor the commercial success of the production through analysis of ticket sales under the following headings;* Advance bookings (up to 3 months before panto production - Total number of seats sold versus Total seat capacity for total production)
* Total number of seats sold for total production run versus total seat capacity for total production run.
* Total Ticket sales '£' / Total Seats sold for the production run
* Total ticket sales versus planned ticket sales for total production run.
 | As a percentage | The Council / The Supplier |
| **Customer Satisfaction** | The production quality and performance of main named artist and supporting cast will be scored under the following headings;* Public customers feedback (sample of post show feedback)
* The Council / Ferneham Hall team feedback (for total production run)
* FBC Councillors feedback
* Critics reviews (feedback from local news agencies)
 | As a percentage *(using a pre-prepared questionnaire to gauge satisfaction levels)* | The Council |
| Tenderer confirmation to work with the Council to track the above KPI’s and develop improvement initiatives / corrective actions to maximise the performance of the pantomime production. | Name & Date: |

**Example Pantomime Customer Survey**

The Council is keen to obtain Customers’ feedback regarding the Pantomime Production and would be grateful if you could provide a response to the following survey questions:

|  |  |
| --- | --- |
| **Information only** |  |
| Have you visited Ferneham Hall before? | Yes / No |
| Following the performance today would you consider returning to Ferneham Hall? | Yes / No |
| Was the price you paid for the pantomime tickets value for money? | Yes / No |

1. = Fail
2. = Poor
3. = Average
4. = Good
5. = Very Good
6. = Excellent

|  |  |
| --- | --- |
| **Example** |  |
| Reference the above scoring criteria,please rate the performance you have seen today in terms of family entertainment. | 1 |
| How would you rate the pantomime costume design? | 2 |
| Please rate the production cast performance. | 3 |
| Please rate the ‘star’ cast member on their performance today. | 4 |
| How do you rate the venue and customer service? | 5 |
| **Total Score** | 15 |
| **Total percentage** |  60% |

(Scoring methodology: 15/25 x 100 = 60%)