

WORKING DRAFT 5 DOCUMENT



TENDER

FOR THE SEVENOAKS PLAYHOUSE AT LONDON ROAD SEVENOAKS KENT
CONTRACTUAL DOCUMENTATION

Please note, amendments to this Working Draft 5 document
are underlined for ease of reference

Any comments are underlined and in italics.

Merle Bigden
Head of Community Development
Sevenoaks District Council
Community and Planning Services
Box 183, Argyle Road
Sevenoaks
Kent TN13 1HG.
Email: merle.bigden@sevenoaks.gov.uk

CONTENTS

	Page No.	
Section 1	Introduction and background	3
Section 2	Timetable and Procedure	6
Section 3	Aim and Outline Requirements	9
Section 4	Evaluation Criteria	13
Section 5	Responses	16
Section 6	Tender Summary Form	21
Section 7	Questionnaire	23
Section 8	Form of Guarantee	52
Section 9	Anti – Collusion Certificate	57
Section 10	Form of Tender	60
Section 11	Operating Agreement and Specification	64
Section 12	Method Statements	68
Section 13	Lease Heads of Terms	81
Section 14	Funding Agreement	86
Appendix 1	Current Maintenance Contracts	97

SECTION 1

Introduction and Background

Section 1: Introduction and Background

- 1.1 The District of Sevenoaks has a population of approximately 109,000 and extends from Swanley in the north to the East Sussex border in the south.
- 1.2 The Sevenoaks Playhouse (also known as the Stag Theatre) is an arts complex owned by Sevenoaks District Council. The complex is currently let upon an interim lease to Kino Holdings Limited.
- 1.3 The Playhouse complex (the Complex) is the largest arts facility in public ownership within the Sevenoaks District Administrative area and the Council wish to provide via the successful Tenderer a vibrant theatre, cinema, community arts and youth outreach with all the Complex facilities being utilised in order fulfil the public's requirements.
- 1.4 The Complex comprises a foyer with coffee bar, two cinemas screens totalling 220 seats, a versatile theatre space (known as the Stag Theatre) totalling 450 seats, which can also be used in reverse format with 139 seats (known as the Cormack Stage), two bar areas adjacent to the theatre and a multi purpose studio at the rear of the building (formerly known as the Plaza Suite.) There is also a range of offices, dressing rooms, orchestra pit and theatre service area.
- 1.5 The Council is committed to the continuation of the complex and wishes to be involved in a partnership approach towards the venture in conjunction with the appointed operators. In this regard the Tenderer will be required to enter into, provide or comply with the following documents : -
 - 1.5.1 Enter into a form of Lease incorporating the Heads of Term (term to be decided) for a period of 10 years minimum; 15 years; 20 years; or 25 years maximum.
 - 1.5.2 Enter into a Funding Agreement (if required),
 - 1.5.3 Provide a live Business Plan showing the Operators funding and financial management of the Complex for the first 5 years of the term of the lease.
 - 1.5.4 [Enter into](#) the Operating Agreement and [show](#) how they will comply with the Specification.
 - 1.5.5 Complete the Tender Questionnaire, (and [enclose all](#) relevant documentation).
 - 1.5.6 Complete the Form of Tender,
 - 1.5.7 Complete the Method Statements,
 - 1.5.8 Provide your Health and Safety Policy.
 - 1.5.9 Provide your Child protection policy.

The Evaluation Criteria set down in Section 4 will be used by the Council to determine whether a new operator can be appointed to run the whole Complex.

- 1.6 When responding to this invitation, Tenderers should include any innovative ideas or original schemes that they consider may enhance the Complex in addition to complying with the Tender requirements.
- 1.7 The Invitation to Tender consists solely of the documents referred to above that are provided by the Council. The details of these documents, and all associated documents are to be treated as private and confidential and for use only in connection with the tender process. Copyright of all tender documents, including any amendments or further instructions, shall remain with the Council.
- 1.8 It is anticipated that the successful Tenderer will take up possession of the complex on a date which is not before the **17th day of May 2007** and will operate in accordance with the documents listed above.

SECTION 2

Application and Procedure Timetable

Section 2: Application Procedure – Tender Process and Timetable

Process

- 2.1 The Council wishes to announce the award of the contract for the operation of the Complex by **12th March 2007**. Responses to this Tender Invitation Document must be received by:

Noon on Monday **22nd January 2007**. (details on how to respond are given in Section 5).
- 2.2 All enquires at tender stage should be made in writing only by email, fax or post to Merle Bigden (Head of Community Development) at the address given in section 5.
- 2.3 All tender submissions will be comprehensively assessed against the evaluation criteria (stated in [Section 4](#) of this document) after which a short list of Tenderers will be selected. [Short listed Tenderers may then be invited to make a presentation](#) to a Tender Assessment Panel
- 2.4 The Council requires Tenderers to bid for the whole operation of the Complex.
- 2.5 The information in this document is offered in good faith as guidance for any interested parties. No guarantee, representation or warranty is given as to its completeness or accuracy, and the Council and its advisers will not be liable for any errors, incorrect statements or omissions. No aspect of this procedure will constitute a contract or part of a contract. Tenderers are invited to participate in the process solely on the understanding that the Council reserves the right to alter the process, or any part of it, or not proceed with it, for any reason.
- 2.6 The Council reserves all rights not to follow up the tender invitation in any way. It also reserves the right not to enter into any type of contractual arrangement with any, or all, of the Tenderers. The Council will not be bound to enter into any negotiations, or to proceed with, or accept, any tender.
- 2.7 All costs and expenses incurred by the Tenderer in any connection with their tender submission or subsequent presentation shall be borne exclusively by the Tenderer. Under no circumstances will the Council be liable for any such costs or expenses, either prior to, or after, the appointment of the successful Tenderer.

Project Timetable

- 2.8 The target timetable for the tender and contract process is set out below:

Deadline for receipt of tender submissions	Noon on 22.1.2007
Presentations to Tender Assessment Panel	w/com 05.02.2007
Tenderers receive written notification of the Council's decision	w/com 12.3.2007
Signature of documentation:	17.4.2007
Commencement of operation/service not before	17.5.2007

These dates are provided for information purposes only. The Council does not guarantee to complete each phase by the dates stated above.

- 2.9 Tenderers will be provided with the opportunity to visit the Complex during December 2006 and early January 2007 at a series of [Open Days on Wednesday 13th December 2006, Friday 15th December 2006 and on Monday 8th January 2007](#). Arrangements for these visits should be made with Merle Bigden, either by email (please state '**Visit to the Playhouse**' in the email header, or by telephone on 01732 227285.
- 2.10 Tenderers may also be asked as part of the reference process to provide a reference site and facilitate a site visit for Council staff (see number 9 Section C Questionnaire) and required deliver a presentation at the Council's offices. Tenderers should be prepared to accommodate either or both of these requests. Tenderers will be notified of the details and timing of their visit/presentation but it is anticipated that presentations will be held during week commencing **5th February 2007**
- 2.11 All Tenderers will receive written notification of the Council's decision.

SECTION 3

AIM AND OUTLINE OF REQUIREMENTS

Section 3: Aim and Outline Requirements

- 3.1 This Tender is for the operation of a cinema, theatre and community arts complex at the heart of Sevenoaks Town and youth outreach across the district. Such a Complex is considered essential for the viability and vitality of the town and more broadly to arts across the district.

A comprehensive consultation was undertaken in August this year regarding the aspirations of the community for the Complex and the Tenderer is required to take account of the conclusions in outlining its plans for the future.

The Tenderer will be required to show the method of operation identifying how they will enhance the importance of the Complex in the community as well as setting out their aspirations in terms of programming, with a balance of professional and amateur productions in respect of the theatre and the ability to provide for specialty and art house films as well as the current blockbusters for the cinema. Additionally the Tenderer will be required to demonstrate how it intends to consult the hirers of facilities within the Complex and link up with the community and how it will provide youth outreach across the Sevenoaks District.

The Tenderer will be required to demonstrate what improvements they can bring to existing services and facilities to meet the needs of the District's public

An explanation should be provided of how the facilities will be used to encourage the attendance of specific groups such as young people, parents with children, and older people.

Details [should be provided](#) of what concessions, packages and deals will be available to the public, including links with local restaurants and other local businesses.

An explanation should [also](#) be provided of any sponsorship arrangements considered and of any 'friends' or similar scheme. Please see Method Statement 7.

3.2 Management of Complex.

3.2.1 The Tenderer will be required to complete the Method Statements of his intended operation as set out in Section 12. This will be based upon the [Specification and Operating Agreement](#) set out in Section 11 of what the Council require at the Complex. Ways to develop the Specification and realistic innovation in operation and delivery is welcomed.

3.2.2 The Tenderer is required to deliver its Business Plan (including profit & loss, balance sheet, and cash flow statement) for the first 5 years of the operation and must include forecasts of revenue returns and identify capital sums that are expected to be available to the Tenderer for the operation of the Centre (see Method Statement 5 Section 12).

3.2.3 The [Operating Agreement](#) incorporates certain management headings (see Section 11) and is intended to run parallel with the lease of the Complex. The Tenderer should state whether they are able to comply with the [Specification and the Operating Agreement](#) and should point out any operational difficulties that they see. The successful Tenderer will be required to enter into an Operating Agreement based upon these terms.

3.2.4 All tenders will be evaluated in accordance with the Evaluation Criteria set down in Section 4.

3.3 The Lease

The Lease will be based upon the Heads of Terms annexed hereto (see Schedule 13). The Council offer the Complex over a choice of 10, 15, 20 or 25 year leases. The Tenderer should indicate in the Tender Summary (Section 6) the length of term they would ideally wish to take based upon the minimum and maximum terms available. The Tenant will fully repair and maintain the building (at their cost) and be responsible for all plant and equipment situated therein. The Lease will be contracted out of the security of tenure provisions of the Landlord and Tenant Act.

3.4 Funding Document

In certain circumstances funding may be considered by the Council as follows:

- (i) [Service fee](#) for community aspects of the service provision at the complex and youth outreach (see Method Statement 2, 3, and 8; and/or
- (ii) Management fee in respect of the operation of the building and related services.

[OR as an alternative, a single amalgamated fee for Cabinet decision:](#)

[Service fee in respect of the management and provision of service at the Complex and for youth outreach \(see Method Statement 2, 3, and 8\)](#)

[Within both options, fees would be broken down and linked to Service provision and Performance Indicators](#)

Whether such aid is available will depend on the nature of the Tenderers bid (the level of liability the Tenderer is prepared to incur) and the availability of such subsidy from the Council. Within

3.5 Consultation Document

Prior to this tender a full consultation of business users and the general public was undertaken to take into account the public expectation for the Complex.

This consultation may be of benefit to tenders and is available at www.sevenoaks.gov.uk following these links: Leisure & Culture – Sevenoaks Playhouse – Sevenoaks Playhouse Consultation Report Set 2006.

[Hirer dossier précis to be provided separately in the tender package](#)

SECTION 4

EVALUATION

Section 4: Evaluation

- 4.1 All tenders received will be evaluated on the information contained in the tender or obtained by the Council as a direct result of the tender process. Submissions will be competitively assessed and the assessment may take into account but is not necessarily limited to the following:

Criteria
<p>1. Compliance to tender requirements:-</p> <p>Feasibility of arts and general provision:</p> <p>Cinema Theatre Studio Bar and Catering Youth Outreach Community links Responses of Method Statements Response to Specification, Operating Agreement and Lease</p>
<p>2. Business experience in relevant work</p>
<p>3. Financial standing: Please also see Tender Specification</p> <ol style="list-style-type: none"> 1. the viability and provision of a business plan showing how the operation will be financed including a cash flow forecast; 2. financial performance to date, including audited year end accounts for the last 3 years; 3. a statement from the company's finance director certifying the status of the accounts since the last published accounts. if this is not available a guarantor/bond will be expected; 4. financial structure; 5. take up of references 6. calculation of financial ratios relating to profitability, liquidity, solvency and gearing; 7. a company search/checks with credit rating agencies;
<p>4. Premises Maintenance</p>
<p>5. Child Protection Policy</p>
<p>6. Any service fee and/or management fee required may need amending re Para 3.4</p>
<p>7. References obtained during the tender process</p>
<p>8. Community Arrangements</p>

9. Enclosed questionnaire responses and policy documents

10. Overall View of bid

<u>Note: Certain minimum qualification scores will be required for compliance. If the minimum scores are not achieved, the council reserves the right to exclude the tender</u>

- 4.2 In evaluating tenders the Council will consider the payment/receipt of any service fee and/or management fee together with the quality and effectiveness of the Tenderers programme of management and their related proposals. The Council will award the contract on what it considers is the best solution coupled with the estimated costs to the Council and therefore an economically advantageous offer which also delivers the Council's aspiration for the Complex.
- 4.3 The evaluation will take into account all information supplied by the Tenderer in support of their application including any clarification or additional information requested by the Council post tender.
- 4.4 The evaluation recommendations will be reported to the Cabinet Members for a decision on the preferred operator. The evaluation process will commence in accordance with the estimated date set down in Section 2.
- 4.5 During this period the preferred Tenderers, may at the discretion of the panel, be invited to give explanations of their tender and clarify the programme and methods of achieving their stated aims. The preferred Tenderers will be notified in due course if and when this is to occur. (Please see estimated dates in Section 2). The panel reserve the right to require verification of any of the statements made by the Tenderer.
- 4.6 The Tenderers may also be asked to provide [details of](#) theatres, cinemas or arts complexes that they have or are currently managing as reference sites.
- 4.7 Tenderers may be required to provide a guarantor/bond from an individual/organisation as set out in Section 8 hereto.

SECTION 5

**RESPONSES ENQUIRES AND OTHER
INFORMATION**

Section 5: Responses, Enquiries and Other Information

- 5.1 It is suggested that tenders are sent by Registered Post, or Recorded Delivery, or delivered by hand in a sealed package bearing the delivery address, and the tender title “**Tender for Sevenoaks Playhouse**” as tenders arriving late cannot be considered. The red label supplied with the tender documentation should be stuck to the front of the envelope having first removed a small corner of the label which should be adhered to back of the envelope. No name or identifying mark (including any franking machine slogan) is to be placed on the package to indicate in any way the identity of the sender. Such identification may lead to disqualification from the tender process.

All tenders either hand delivered or delivered by courier must be delivered to the **main reception** of the address below, between the hours of 08:45 and 16:45 hours, and by no later than time stated below on the closing date. Deliveries made to any other points will be deemed as non-delivery and non-acceptance of submission.

Tenders must be returned by the closing date and time, to the following address, to arrive no later than **noon** on:

Closing Date: **Monday 22nd January 2007**

The Chief Executive,
Sevenoaks District Council Offices,
Argyle Road,
Sevenoaks, Kent,
TN13 1HG.

[Tender returns must be submitted in a sealed package as detailed above otherwise they may be rejected.](#)

Tenderers should submit 2 (two) paperwork copies (one UNBOUND) and one CD copy of the tender return and additional information as appropriate. All responses must be in English and the CD must use Microsoft Word or Adobe PDF.

- 5.2 All information contained in this tender (and associated documentation) or in connection with this invitation to tender shall be regarded as confidential by the Tenderer, the Council and its advisors, except where such disclosure is necessary by the Council pursuant to the Council's obligations under the Local Government Act 1972 and the Freedom of Information Act 2000 or such information is disclosed by the Tenderer for the purpose of obtaining sureties and quotations necessary for the preparation of the tender
- 5.3 Tenderers must carefully examine and consider the tender document and satisfy themselves of the appropriateness and validity of any information provided. In submitting a tender, Tenderers shall be deemed to have read and understood all of the tender documents.

- 5.4 If any points in the tender documents are unclear, Tenderers may seek clarification by writing. **Enquiries should be addressed to Merle Bigden, Head of Community Development, [Sevenoaks District Council, Community and Planning Services](#), Council Offices, Box 183, Argyle Road Sevenoaks Kent TN13 1HG and headed [‘Clarifications on Tender for Sevenoaks Playhouse’](#).**
- or by e-mailing merle.bigden@sevenoaks.gov.uk . If seeking clarification by e-mail, please ensure the tender title is included in the subject field.
- 5.5 Innovative and original ideas are welcomed and Tenderers may propose their own alternatives to meet the Council’s requirement. Any alternatives proposed must however fulfil the minimum requirements as set out in the Operating Specification in Section 11 as [detailed](#) by the tender documents otherwise the tender will be rejected.
- 5.6 Tenderers must sign and date the Form of Tender (Section 10) and Anti-Collusion Certificate (Section 9) provided and return them together with their tender.
- where the Tenderer is an individual by that individual
 - where the Tenderer is a partnership, by at least two duly authorised Partners;
 - where the Tenderer is a company, by a Company Director, where such person is duly authorised for that purpose.
- 5.7 The Tenderer is required to hold the tender open for acceptance for a period of 90 days from the closing date for the submission of tenders.
- 5.8 In the event of a tendering company having a parent company or being financed by an external source a Deed of Guarantee [or Bond](#) will be required in the forms as shown in Section 8. Tenderers are required to state, within their tender submission, if either of the above is applicable to them and if so, what organisation will be providing the guarantee [or bond](#). The Deed of Guarantee [or Bond](#) will be forwarded with the contract should the Tenderer be successful.
- 5.9 Tenderers are reminded that any required changes to the tender documents are to be highlighted at the time of submission. These changes may or may not be accepted by the Council. No changes will be entertained in any way after the confirmation of the award of the contract. The Council reserves the right to cancel the award if requests for changes are made after the award has been given.
- 5.10 Conditional tenders will be disregarded where the condition upon which a tender is based cannot be fulfilled.
- 5.11 The contract to be awarded shall be based on the form of the draft documentation referred to in Section 1 (condition 1.5) of this document. Whilst

the Council accept [that](#) minor changes to this documentation will be required dependent on the nature of the bid, the Council will not allow any material changes that it considers are fundamental to its requirements. The Form of Tender (duly completed) that will be signed by all parties [who have authority to commit for](#) the Tenderer and the documentation [which](#) shall be deemed to be incorporated into the tender documents shall be the Tender Summary Form, Tender Questionnaire, Anti-Collusion Certificate, Form of Tender Pricing Schedule, Method Statements (including the Tenderers Business Plan), Health and Safety Policy, Child Protection Policy together with the Deed of Guarantee or Bond, Operating Agreement, Lease and any Funding Agreement and all other relevant documentation.

- 5.12 Tenderers must state if any part of their programmes or services to be carried out on the [Complex](#) require the use of sub-contractors. The Council reserves the right to reject the use of any particular sub-contractor.
- 5.13 Sums payable or receivable under the various documentation heads i.e. Management Fee, Rent, [Service Fee](#), Maintenance of building should be listed in the Pricing Schedule to the Form of Tender (Section 10).

[5.13 may need amending following Cabinet decision regarding an alternative single service fee see Para 3.4](#)

- 5.14 The Council is fully committed to the principles of Investors in People. Tenderers should state whether or not their organisation is in possession of Investors in People accreditation or equivalent accreditation.
- 5.15 The Council is committed to the principle of the “Best Value Initiative in Local Government” for managing continuous improvement in the delivery of its services. Whilst such a regime has limited impact on non-publicly funded organisations Tenderers should indicate whether their organisation has adopted an equivalent Quality Scheme approach.
- 5.16 The Council supports the principle of equality and fairness and opposes all forms of unlawful or unfair discrimination on the grounds of gender, race, religion, age, sexuality, social background and disability. This includes embracing the principles of the Race Relations [\(Amendment\) Act 2000](#) which seeks to establish race equality and good race relations. Please provide details of how you are seeking to achieve this. If you have an equality and fairness policy please provide evidence.
- 5.17 Tenderers are required to be aware of the Contracting Authority’s commitment to diversity. As part of this commitment the Contracting Authority requires that the tender is not only compliant with all statutory requirements but also demonstrates an ongoing commitment that ensures fairness of treatment is being applied and improved by the potential Operator during the life of the Contract.
- 5.18 [The Council wishes the successful operator to provide access for people with disabilities in line with current legislation and requires you to forward a copy of your Disability Statement and Policy.](#)

- 5.19 Tenderers should include any general promotional material or advertisements that they may publish on their Company to illustrate their range of capabilities.
- 5.20 It is the responsibility of the successful Operator to ensure that when any relevant changes occur they are notified to the Council. Tenderers are requested to complete the relevant part of the Questionnaire.

SECTION 6

TENDER SUMMARY FORM INFORMATION REQUIRED FROM TENDERERS

Section 6: Information Required from Tenderers

Please indicate whether your Tender meets the following requirements by indicating either Yes or No: -

1.	Have you attached a completed and signed Form of Tender	Yes	No
2.	Have you attached a Business Plan detailing a five year requirement	Yes	No
3.	Have you completed the Method statements and attached the same	Yes	No
4.	Have you provided your Health and Safety Policy	Yes	No
5.	Have you provided your Child Protection Policy	Yes	No
6.	<p>Have you completed and attached the Tender Questionnaire and provided any supporting documents required.</p> <ul style="list-style-type: none"> • Race Relations Policy • Equal opportunities Policy • Disability and Discrimination Statement and Policy • Health and Safety Policy 	Yes	No
7.	What term of years do you require the lease to be over. Please delete the non applicable? * Please delete the non applicable number of years.	10* 15* 20* 25*	
8.	Will your tender require a guarantee or bond?	Yes	No
9.	Have you provided details of the guarantor for the Lease.	Yes	no
10.	Can you comply with the Operating Specification.	Yes	No
11.	Please confirm that you will enter into the Lease and Funding Agreement as drafted.	Yes	No
12.	Have you signed the Anti Collusion Certificate	Yes	No

SECTION 7

QUESTIONNAIRE

QUESTIONNAIRE

INSTRUCTIONS FOR COMPLETION

The information disclosed in this form will be used in the evaluation process. Any invitation to tender based on this questionnaire, however, does not imply any representation by the Council as to your financial stability, technical competence or ability in any way to carry out the Services. The right to return to these matters as part of the formal tender evaluation process is hereby reserved to the Council.

1. Please note that whenever used in this questionnaire, the term “Firm” refers to a sole proprietor, partnership, incorporated company, co-operative, as appropriate, and the term “Officer” refers to any director, company secretary, partner, associate or other person occupying a position of authority or responsibility within the Firm.
2. Unless instructed otherwise when answering the questions, please give details which specifically relate to your Firm, not to the whole of the group if your Firm forms part of a group.
3. Please answer all questions as indicated, continuing on a separate sheet of paper if necessary. Each such sheet and all supporting documents sent should be clearly marked with the numbers of the sections and questions to which they relate.
4. Please do not include general marketing or promotional material for your Firm, either as answers to any of the following questions, or for any other reason.
5. When answering the Questionnaire Tenderers should bear in mind the other documentation that makes up the tender, particularly [the Operating Agreement and Specification](#) in order that they may resolve any potential ambiguities.
6. The completed questionnaire must be returned, together with supporting documents, in the enclosed tender envelope which should not be marked in anyway.

SECTION A - THE IDENTITY OF THE APPLICANT

1. Name and address of your Firm. This should be the Firm which will submit the tender. (See Instructions for Completion on page 24 for the definition of "Firm").

2. Details of any other relevant addresses. You should state, for example, the registered office and/or other premises from which you propose to administer this contract.

3. Name of person making application on your behalf, and their position in the Firm.

4. Address for correspondence, telephone and fax number.

5. Are you a sole trader, partnership, company or other body? Please specify.

6. List the full names of every Officer. (See Instructions for Completion on page 24 for the definition of "Officer").

7. Have any of the **Officers** been bankrupt or involved in any Firm which has gone into liquidation or receivership? (If so, please give details).

8. Has any Officer been employed by this Council? (If so, please give details).

9. Please state if any Officer has a relative(s) who is a Member of or is employed by the Council at a senior level. (If so, please give details).

10. Please state the names of Officers of your Firm who have any involvement in other Firms who provide services to the Council.

Questions for partnerships and sole traders

Partnerships only

11. Please give the full names (including all forenames) of all equity partners.

12. What is the total number of partners?

Partnerships and sole traders

13. When was the Firm formed?

14. Is the Firm a member of a group including other Firms?

15. If yes, please give the names and addresses of all the other members of the group; where a partnership, the total number of equity partners in each Firm; the date when those Firms were formed; and full details of the structure of the group indicating, for example, whether it is a partnership itself or a collection of separate partnerships sharing services.

Questions only for companies

16. Registration number, and date of registration under the Companies Act 1985 or (if applicable) the Industrial Provident Societies Acts 1965 to 1978

--

17. If your Firm is a member of a group, please describe (with a diagram if necessary) its relationship with the group.

--

18. If your Firm is a member of a group, please state the names and addresses of the ultimate holding company and all other subsidiaries.

--

19. Would the group or the ultimate holding company be prepared to guarantee, as its subsidiary, your Firm's contract performance?

YES	
NO	

Tick as appropriate

20. If the answer to 19 above [is yes](#), please give full details of the Company who will act as Guarantor for the Firm, and confirm that that company will be prepared to enter into the Deed of Guarantee incorporated at Section 8.

<p>Insert Name and address of guaranteeing company here:</p> <p>Company Name:</p> <p>Address</p> <p>Insert contact details at guaranteeing company and telephone number:</p> <p>Contact: _____</p> <p>Tel Nos : _____</p> <p>They will act as Guarantor of the Operating Agreement and the for the performance of all appropriate Tender documentation:</p> <p style="text-align: right;">Yes/No</p>

- [21. The Lease \(see Section 13\) may also require a separate form of guarantee. Please provide details of the Guarantor below:](#)

<p>Details of Lease Guarantor</p> <p>Name</p> <p>Address</p>

Charitable Trust

21. If your Firm is a Charitable Trust or is a registered charity under the Charities Act 1993, please state its registered name and address:

Charitable or Trust Company Name:

Address:

Please state the charitable purpose:

Charities Registration Number (if applicable) : -

22. Please detail the name and addresses of the Trustees of the Charity/Charitable Trust stating their administrative position (if any) within the Trust. i.e. Board Member

Name;
Address

Position

Name
Address

Position

Name
Address

Position

23. [Please state whether the Charity is incorporated as a body corporate under the Charities Act 1993 and a certificate granted:](#)

Section 52 of the Charities Act 1993:

Yes	No
------------	-----------

SECTION B - FINANCIAL STANDING

1. What is the name of the person in the Firm responsible for financial matters?
What position does that person hold?

--

2. Please **enclose** copies of all audited accounts and annual reports for the last three full years of trading as submitted to the Inland Revenue [and/or Charity Commissioners](#). Please ensure that these include:-
- (a) balance sheet
 - (b) profit and loss accounts or income and expenditure accounts
 - (c) full notes to the accounts
 - (d) managing partner's or director's report, and auditor's report.

Enclosed	YES	
	NO	

Tick as appropriate

3. If the accounts you are submitting include none for a financial year ending less than 10 months ago, can you confirm that the trading position now is similar?

--

4. If no, please give full details.

--

5. If yes to 3, please enclose a statement of turnover since the last published accounts.

Enclosed	YES	
	NO	

Tick as appropriate

6. Complete the table below to show your Firm's annual turnover.

YEAR	ANNUAL TURNOVER
2002- 2003	
2003-2004	
2004-2005	
2005-2006 (estimated)	

7. Please provide the name and address of your bankers, and confirm by means of a letter on your headed notepaper in the form set out on page 47, signed by an authorised signatory, that we may obtain references from them.

Enclosed	YES	
	NO	

Tick as appropriate

8. Please provide details of your **Firm's** current turnover for each type of work in which you are interested.

--

9. Please give details on a separate sheet, of any outstanding claims or litigation against the Firm.

Enclosed	YES	
	NO	

Tick as appropriate

Taxation

10. VAT Registration Number.

--

Insurance

11. Please give details of insurance as indicated below, supplying in each case a copy of the policy held by you in relation to that insurance.

11.1 Employers Liability Insurance held.

INSURER	
POLICY NO.	
EXTENT OF COVER	
EXPIRY DATE	

Enclosed	YES	
	NO	

Tick as appropriate

11.2 Public Liability (Third Party) Insurance held.

INSURER	
POLICY NO.	
EXTENT OF COVER	
EXPIRY DATE	

Enclosed	YES	
	NO	

Tick as appropriate

11.3. Contents Insurance availability.

Company	
Ability to provide Cover	Yes/No
Allowance made for cover in quote.	Yes/No

Delete as appropriate

11.4 Please enclose full details of any claims in excess of (£15,000) made under your Firm's professional indemnity policy within the last three years.

Enclosed	YES	
	NO	

SECTION C - TECHNICAL CAPACITY AND ABILITY

The following questions are intended to indicate your Firm's general technical capacity and ability. Where necessary, please expand your answers to cover any particular arrangements which would apply to some only of the work advertised, or to the different types of work in which you are interested.

1. Please indicate below the name and reference of the contract for which you are applying.

--

2. [Has your Firm always been able to provide the service required in accordance with the agreed programme in respect of any contract within the last 3 years?](#)

--

3. Has your Firm ever had a contract terminated or your employment determined under the terms of a contract?

--

4. Has your Firm ever **not** had a contract renewed for failure to perform to the terms of a contract?

--

5. Have any of your Firm's contracts ended early by mutual agreement following allegations of default on your Firm's part?

--

If the answer to any of questions 2-5 above is yes, please enclose details.

Enclosed	YES	
	NO	

Tick as appropriate

6. How has your Firm assessed the suitability and competence of the staff who will be allocated to this [service](#)? (Please specify. For example, job descriptions, qualifications, etc).

A large, empty rectangular box with a thin black border, intended for the respondent to provide details on how their firm assessed the suitability and competence of staff allocated to the service.

7. Please set out the management structure of your staff, detailing the key positions on how you envisage the operation will be carried out by your Company.

Description	Who

8. Please provide details of **relevant** experience for the performance of this contract. Including the name and address of the venues (including a contact name and telephone number) and details of the productions carried out in theatre and experience at cinema.

Name and address of organisation	Contact name and telephone number.	Nature of experience	Contract date
1.			
2.			
3.			
4.			
5.			

9. Please confirm that you have no objection to the Council taking up references as detailed in 8 above or attending at the site/venue for evaluation purposes. :

Yes	No
------------	-----------

10. Please **enclose** details of how your Firm will ensure that a quality service is delivered and maintained. Have you obtained, for example, certification under BS EN ISO9000 or some other similar quality assurance system?

Enclosed	YES	
	NO	

Tick as appropriate

11. Please **enclose** details of how your Firm would deal with conflicts of interest were any to arise during the course of the contract.

Enclosed	YES	
	NO	

Tick as appropriate

SECTION D – DIVERSITY QUESTIONNAIRE

Firms should attempt to answer each of the following questions, substituting where relevant the appropriate legislation/codes of practice etc which are applicable within their domestic jurisdiction.

1. Do you comply with the Sex Discrimination Act 1975 and the Equal Pay Act 1970?

2. Is it your policy as an employer to comply with your statutory obligations under the Race Relations Act 1976 and accordingly, your practice not to treat one group of people less favourably than others because of their colour, race, nationality or ethnic origin in relation to decisions to recruit, train or promote employees?

3. In the last three years, has any finding of unlawful racial discrimination been made against your Firm by any court or industrial tribunal?

4. In the last three years, has your organisation been the subject of formal investigations by the Commission for Racial Equality on grounds of alleged unlawful discrimination?

If the answer to question 3 is yes or, in relation to question 4, the Commission made a finding adverse to your organisation:-

5. What steps did you take as a consequence of that finding?

6. [Please provide your policy on race relations.](#) Is this policy set out:-

a. in instructions to those concerned with recruitment, training and promotion?

--

b. in documents available to employees, recognised trade unions or other representative groups of employees?

--

c. in recruitment advertisements or other literature?

--

Please supply relevant examples of the instructions, documents, recruitment advertisements or other literature.

Enclosed	YES	
	NO	

Tick as appropriate

7. Do you observe as far as possible the Commission for Racial Equality's Code of Practice for Employment, **which came into effect 1 April 1984**, which gives practical guidance to employers and others on the elimination of racial discrimination and the promotion of equality of opportunity in employment, including the steps that can be taken to encourage members of the ethnic minorities to apply for jobs or take up training opportunities?

--

Description of evidence

8. If you are not currently subject to UK legislation, please supply details of your experience in working under equivalent material legislation which in your country is designed to eliminate discrimination (especially racial discrimination), and to promote equality of opportunity.

Enclosed	YES	
	NO	

Tick as appropriate

SECTION E – EQUAL OPPORTUNITIES QUESTIONNAIRE

Tenderers are required to answer the following questions as part of the tender response by ticking either Yes or No.

1. Does the Tenderer have an Equal Opportunities Policy?

Yes		No	
-----	--	----	--

If yes, then a copy of the policy must be included in the tender return.

If No, then tender disqualification will not occur, but it is advised that a policy be developed and implemented.

2. Is your policy on Equal Opportunities set out in the following?

In instructions to those concerned with recruitment, training or promotion of employees?

Yes		No	
-----	--	----	--

If yes, details are to be provided as part of the tender response.

In documents available to employees, recognised Trade Unions or other employee representative groups?

Yes		No	
-----	--	----	--

If yes, details are to be provided in the tender response.

In recruitment advertisements or other literature?

Yes		No	
-----	--	----	--

If yes, please provide a copy of a recent recruitment advertisement.

3. It is a requirement that Tenderers comply with all relevant statutory regulations relating to the treatment of one group less favourably than another. Therefore do you ensure that fairness and equality is demonstrated irrespective of gender, race, colour, ethnic origin, disability, sexuality, age or religion in relation to recruitment, training and promotion? *

Yes		No	
-----	--	----	--

4. In the last three years has any court or tribunal found a case of unlawful discrimination against the Tenderer? *

Yes		No	
-----	--	----	--

If yes then a copy of the actions taken to ensure a recurrence will not take place must be included in the tender return.

Enforcement action will not disbar the Tenderer from inclusion, but failure to disclose the information will.

5. In the last three years has the Tenderer been the subject of a formal investigation by the Commission of Racial Equality, the Disability Rights Commission or the Equal Opportunities Commission on grounds of alleged unlawful discrimination? *

Investigation will not disbar the Tenderer from inclusion, but failure to disclose the information will.

Yes		No	
-----	--	----	--

If yes, then a copy of the actions taken to ensure a recurrence will not take place must be included in the tender return.

6. Over the last three years how many cases of unlawful discrimination have been awarded against the Tenderer? How many cases of formal investigation have been undertaken involving the Tenderer? What are the Tenderer's total numbers of employees and within this number what is the ratio of permanent to temporary employees?

Number of Employees	
Temporary staff (% of total)	
Permanent staff (% of total)	
Number of unlawful discrimination awards	
Number of formal investigations	

7. Does the Tenderer observe, as far as possible, the Commission for Racial Equality's Code of Practice for Employment, the Disability Rights Commission's Employment and Occupation Code of Practice and the Equal Opportunities Commission's Code of Practice which provide practical guidance to employers, and others, on the elimination of discrimination and the promotion of equalities/fairness in employment and training?

Yes		No	
-----	--	----	--

The Contracting Authority will take responses to this questionnaire into account in the evaluation process. It is not a legal requirement for a Tenderer to answer 'yes' to all of the questions before they will be considered for selection.

* Greater importance will be given to the answers received to Questions 3, 4 and 5.

SECTION F: DISABILITY AND DISCRIMINATION

1. The Disability and Discrimination Act 2005 requires “controllers of premises” which includes companies who manage rented premises to make reasonable adjustments to their policies, practices and procedures to provide auxiliary aids or services in certain circumstances. Please confirm that your Firm is aware of and will comply with this legislation:

Yes		No	
-----	--	----	--

2. [The Council will require to see a copy of your Disability Statement and Policy. Please confirm a copy of this is enclosed.](#)

Yes		No	
---------------------	--	--------------------	--

3. [If you already operate a building please provide copies of any current DDA audit and action plan.](#)

Enclosed?	Yes		No		N/A	
---------------------------	---------------------	--	--------------------	--	---------------------	--

4. [Please provide details of any suggestions you may have to improve the operation of the Complex for people with physical disabilities and what improvements may be made for other forms of disabilities e.g. vision or hearing impairment\).](#)

Suggestions:

SECTION G - HEALTH AND SAFETY

1. Has your Firm, during the last three years, been prosecuted for contravention of the Health and Safety at Work etc Act 1974, or equivalent national legislation? Has your Firm been the subject of a formal investigation by the Health and Safety Executive, or similar national body charged with enforcing health and safety standards? (If so, please give full details).

--

2. Give the name of the Officer or other person responsible for the implementation of your Firm's health and safety policy. Enclose a brief CV of this person.

--

Enclosed	YES	
	NO	

Tick as appropriate

3. If your Firm has more than five members of staff, please enclose a copy of the Firm's health and safety policy and/or other declaration, information, or instruction issued by your Firm, as necessary, to protect the health and safety of staff at work.

--

Enclosed	YES	
	NO	

Tick as appropriate

4. How are your health and safety policies and procedures conveyed to your staff and administered within your Firm? (Please supply details).

Enclosed	YES	
	NO	

Tick as appropriate

5. Please state the Firm's policy on the training of employees especially in relation to Health and Safety matters.

6. Does your Firm's Health and Safety Policy cover the following? Please enclose written details.

(a) Procedures to be followed in case of emergency.

Enclosed	YES	
	NO	

(b) Procedures for the reporting and recording of
accidents and dangerous occurrences.

Enclosed	YES	
	NO	

- (c) First Aid and welfare provisions.

Enclosed	YES	
	NO	

- (d) Provision of appropriate protective clothing and equipment.

Enclosed	YES	
	NO	

- (e) Provision of appropriate procedures for safe working practices including risk assessments:

Enclosed	YES	
	NO	

7. Please enclose a Risk Assessment based upon the Service that is to be provided. To include the assessments required under COSHH Regulation where appropriate.

Enclosed	YES	
	NO	

SECTION H - UNDERTAKING

When you have completed the Questionnaire, please ensure that:-

1. you have answered all appropriate questions or have indicated they are not applicable.
2. you have **enclosed** all documents requested;
3. you have read and signed the section below.

The Specification Heads of Terms of the Management Agreement and Lease have been considered by my Firm in completing this questionnaire and I certify that my Firm is interested in performing the services set out in them.

I certify that the information supplied is accurate to the best of my knowledge and that I accept the conditions and undertakings requested in the questionnaire. I understand and accept that false information could result in rejection of our application to tender.

I also understand that it is a criminal offence, punishable by imprisonment, to give or offer any gift or consideration whatsoever as an inducement or reward to any servant of a Public Body. I also understand that any such action will empower the Council to cancel any contract currently in force and will result in rejection of our application to tender.

NB. This undertaking is to be signed by a partner or authorised representative in their own name on behalf of your Firm.

Signed for and on behalf of the Firm:

Signed

Position/status in the Firm

Firm's name

Firm's address

Dated

Manager of

Dear Sir

BANK REFERENCE FOR SEVENOAKS DISTRICT COUNCIL

Our firm holds a number of accounts at your office under account references [] and has been asked to provide a bank reference to the above authority in respect of financial services which we are offering to that authority.

This letter hereby authorises you to provide full details of our accounts to that authority, together with a history of our banking record over the previous three years. It also authorises you to answer such other reasonable questions which they may ask for the purpose of assessing the financial and economic standing required of service providers to that local authority.

Yours faithfully

SECTION 8
FORM OF GUARANTEE
OR BOND

Section 8 – Deed of Guarantee (For information only)

THIS AGREEMENT is made the _____ day of _____ 20_____

BETWEEN: _____

whose registered office is situated at

(hereinafter called "the Guarantor") of the one part and

THE DISTRICT COUNCIL OF SEVENOAKS of Council Offices Argyle Road
Sevenoaks Kent TN13 1HG.

(hereinafter called "the Council") of the other part

Whereas

- 1. This agreement is supplemental to a Lease and Operating Agreement (hereinafter called "the Contract") entitled "Tender for Sevenoaks Playhouse" and made between

(hereinafter called "Operator") of the one part and the Council of the other part whereby the Operator has agreed to manage a Complex for the Council upon the terms and conditions more particularly described therein.

- 2. The Operator is a subsidiary company of the Guarantor or is financed by the Guarantor.
- 3. The Guarantor has agreed to guarantee the due performance of the Contract in manner hereinafter appearing

NOW the Guarantor hereby agrees with the Council as follows:

- 3.1 If the Operator (unless relieved from the performance by any Condition of the Contract or by the decision of a tribunal of competent jurisdiction) shall in any respect fail to perform the Contract or commit any breach of its obligations thereunder or shall cease to exist then the Guarantor will indemnify the Council against all losses damages costs and expenses which may be incurred by it by reason of any default on the part of the Operator in performing its obligations contained in the Contract to the extent that such losses damages costs and expenses are or would otherwise be recoverable by the Council.

- 3.2 The Guarantor shall not be discharged or released from this guarantee by any agreement conduct omission breach or repudiation by the

Operator or the Council or by any forbearance whatsoever on the part of the Council.

Signed and delivered as a Deed by _____

(add Company name assuming it is a limited company) acting by (add the names of a Director and Company Secretary or two Directors):

SIGNED _____ DIRECTOR

NAME _____

SIGNED _____ COMPANY SECRETARY/DIRECTOR

NAME _____

OR

Signed and delivered as a Deed by _____

(add Name of Partner if partnership) duly authorised in that behalf in the presence of:

SIGNED _____ PARTNER

WITNESS SIGNATURE _____

WITNESS NAME _____

WITNESS ADDRESS: _____

SECTION 8: On Demand Bond (for information only)

BY THIS BOND dated the _____ day of
 _____ 2007

WE {*Bank*} whose registered office is at _____ ('the Bank') are firmly held and bound unto THE DISTRICT COUNCIL OF SEVENOAKS of Council Office Argyle Road Sevenoaks Kent TN13 1HG (hereinafter called 'the Client') in the sum of £----- (Operator to state the figure) for the payment of which sum the Bank binds itself its successors and assigns by the terms hereof.

RECITALS:

(A) 'The Operator ' _____ Limited of

has entered into an Agreement dated _____ 2004 with the Client (the Operating Agreement and Lease) for the operation of the Complex in accordance with the terms thereof.

OPERATIVE PROVISIONS:

1. **Payment on Demand**

1.1 The bank hereby gives the Client its bond and guarantee and undertakes to pay to the Client on receipt of its first demand in writing (a 'Demand') on the Bank stating that the Contractor is in breach of its obligation under the Contract for the sum stated in such demand
 PROVIDED THAT:

1.1.1. the Bank shall not pay any sums to the Client in respect of a Demand unless it is accompanied by a certificate ('the Certificate') issued by the Client stating that in their opinion the Contractor is in breach of their obligations under the Contract and that the sum or sums stated in the Demand which it accompanies are appropriate recompense for such breach.

1.1.2. A Demand must be signed on behalf of the Client the signatures duly authenticated by the Client's bankers (Barclays Bank PLC 80 High Street Sevenoaks Kent) and presented to the Client's bank together with a copy of the Certificate referred to in 1.1.1. above duly authenticated by the Client's bankers.

2. No Proof or Conditions

The Bank hereby agrees that it will fulfil its obligations under this Bond without proof or conditions save as expressly provided herein and that the receipt by the Banker of the Demand {and Certificate) in accordance with the terms of this Bond shall be conclusive evidence of the Bank's liability to pay the Client the sum stated.

3. Assignment

The Client may at any time at its discretion assign or charge the whole or any part of the benefit of this Bond.

4. Law and jurisdiction

The construction validity and performance of this Bond is subject to English law and the English courts shall have jurisdiction over any dispute arising out of or in connection herewith.

Delivered as a deed on the date at the head of this document.

SIGNED and delivered as a deed by _____

Witnessed by _____

EXECUTED under the common seal of _____

Director _____

Secretary _____

SECTION 9

ANTI COLLUSION CERTIFICATE

Section 9 – Anti-Collusion Certificate

- 1 We certify that:
- (i) This tender is a bona-fide tender;
 - (ii) We have not fixed or adjusted the amount of the tender by or under or in accordance with any agreement or arrangement with any other person;
 - (iii) We have not and we undertake that we will not before the award of any contract for the Services: -
 - (a) communicate to any person other than the person calling for this tender or a person duly authorised by him [the details of the tender or proposed tender](#), except where the disclosure, in confidence, of the [details of the tender](#) was necessary to obtain insurance premium quotations required for the preparation of the tender;
 - (b) enter into any agreement or arrangement with any person that he shall refrain from tendering, that he will withdraw any tender once offered or vary the [details](#) of any tender to be submitted;
 - (c) pay, give or offer to pay or give any sum of money, inducement or other valuable consideration directly or indirectly to any person for doing or having done or causing or having caused to be done in relation to any other tender or proposed tender for the Services any act or thing of the sort described at (a) or (b) above.
2. We further certify that the principles described in paragraphs 1(iii), (a), (b) and (c) above have been, or will be, brought to the attention of all sub-contractors, suppliers and associated companies providing Services or materials connected with the tender and any contract entered into with such sub-contractors, suppliers or associated companies will be made on the basis of compliance with the above principles by all parties.
3. In this certificate, the word “individuals” includes any individuals and any body or association, corporate or unincorporated; “any agreement or arrangement” includes any transaction, formal or informal and whether legally binding or not; and “the Services” means the Goods and/or Services in relation to which this tender is made.

Dated this _____ day of _____ 20 ____

Signature _____ in the capacity of _____

Duly authorised to certify the contents of this Anti-Collusion Certificate for and on behalf of:

Postal Address

Fax No: _____ Telephone No _____

SECTION 10
FORM OF TENDER

Section 10: Form of Tender

TENDER FORM

SEVENOAKS DISTRICT COUNCIL

TO: The Chief Executive,
Sevenoaks District Council
Council Offices
Argyle Road
Sevenoaks
Kent
TN13 1HG

* Please delete the non-applicable

Having examined the Instructions and invitation to Tender, including the Specification and the documents referred to in The Tender Summary Form ([Section 6](#)) together with all associated documentation and Appendices, I/We hereby tender and undertake to [manage operate and lease the Complex](#) (Sevenoaks Playhouse).

We offer to carry out the management operation at the [Complex \(Sevenoaks Playhouse\)](#) in conformity with the Specification and [will enter into an Operating Agreement and Lease based upon the Heads of Terms forming part](#) of this Tender and [the other documentation set out herein over a term of years that I/We* have indicated in the Tender Summary Form.](#)

We understand you are not bound to accept the lowest or any tender you may [receive and you will not pay any expenses incurred by us in connection with the preparation and submission of this Tender.](#)

It is agreed that any other terms or any general reservations which may be printed on any correspondence emanating from me/us in connection with this Tender or any contract resulting from this Tender shall not be applicable to this Tender or to the contractual documents unless specifically accepted by the Council's Legal Department.

I/We* have completed and signed ([where necessary](#)) the following documents, attached hereto:-

- (i) Tender Summary Form
- (ii) Tender Questionnaire.
- (iii) The Anti Collusion Certificate
- (iv) The Form of Tender;
- (v) Pricing Schedule
- (vi) Method Statements

I/We agree that this tender shall remain open to be accepted or not by the Council and shall not be withdrawn for a period of ninety (90) days from this date.

I/We* undertake to execute a formal Counterpart Lease, Operating Agreement [and \(if required\)](#) Funding Agreement and all other required documents with the Council embodying all the terms and conditions contained in this offer. Unless and until a Form of Lease and other supporting documents are prepared and executed this Form of Tender together with the Council's written acceptance thereof shall constitute a binding Contract between us subject to the Council not being required to accept the lowest or any tender.

Yours faithfully

.....

Position in Company

Name and Address of Company

.....

.....

Dated.....2007

Pricing Schedule

Please estimate the following requirements:

*delete the non-applicable.

Requirement (Note: the Council makes no commitment to any level of <u>Management or Service fee in this tender process</u>)	Payable to the Council*	Received from the Council*
<u>Management fee</u> (if any) for the operation of the building and related services (excluding community provision) payable per annum for each of the first 5 years in line with <u>your proposed Business Plan, but to be reviewed every 4 years by mutual agreement, dependent on operating success</u> (measurement to be agreed at a later date)	£ £ £ £ £	£
<u>Rent free period up to 5 years, followed by a rent review commencing 6 months before the end of the rent free period. Please state any rent to be paid to the Council during this period. Such rent to be then reviewed every 5 years.</u>	£	N/A
Anticipated level of Service fee (if any) for community provision and youth outreach you would require per annum from the Council (see Method Statements 2, 3 and 8) for each of the first <u>five years in line with your proposed Business Plan, but to be reviewed every four years</u>		
Anticipated maintenance cost per annum under the Lease	Please just state figure in this box £	

SECTION 11

PLAYHOUSE SPECIFICATION AND OPERATING AGREEMENT

Section 11: Playhouse Operating Specification

Playhouse Specification

The Council's [objective is](#) to see the Complex re-established as a professional and community venue serving the whole district. In setting out the tender [Specification](#), the results of the consultation on the future of the Complex, undertaken in August 2006, have been taken into account, as well as the views of theatre hirers comprised in a dossier presented to the Council earlier in the year.

The Tenderer will be required to complete Method Statements by providing details of how they will carry out the operation and comply with the following:

Cinema : A varied film programme including speciality and art house as well as current blockbusters, with specific provision for families with young children, young people and older people. This type of special provision must take account of the need to arrange film showings/events at an appropriate time of day to take account of ease of access and community safety (e.g. Children's Club, afternoon showings for older people and those relying on public transport). Additional innovative uses of the cinema would be an advantage.

Theatre : A viable theatre programme which balances amateur and professional performances, supported by professional stage use and stage service areas. Public support for a range of drama/music/comedy/family shows/ dance etc is set out in the consultation report. Additional innovative uses of the theatre space and service areas to maximise usage and public availability would be an advantage. The Operator will make every reasonable effort to provide a box office service to any hirer of the Complex or outside venues at a rate to be agreed with the Operator.

Studio: A flexible space to meet the needs of the community and the overall arts programme including provision for studio performances, exhibitions, arts and community events, conferences, workshops, and hirings, provided that such activities shall not extend to any sports or fitness use as already provided by the Council's Leisure Partnership with Sencio.

Bars and catering: The Council does not wish to be prescriptive about the use of the bars and catering facilities, however, there will be a requirement to provide or arrange for the availability of appropriate refreshments relating to the programme of activities/hirings.

Business arrangements such as sub letting or contracting: The Council is willing to consider sub-contracting arrangements relating to the provision or operation of the services compatible with the objectives of the Complex. It will not however agree to sub-letting or sub-contracting for other non-related purposes or to any sub-leasing arrangements. In particular circumstances it may be prepared to grant a non – exclusive licence for occupation of the under utilised parts of the premises, provided such licences do not include an activity which is outside the User Clause of the lease.

Any such arrangements will be required to conform to current legislation on Health & Safety and comply with the Council's Child Protection Policy.

Staffing/use of volunteers: The Council recognises that the Complex could be successfully managed via a variety of staffing structures and roles and that this is a matter for the Tenderer to put forward. However, it is a requirement that the Complex must be managed to high professional standards and provide a friendly and welcoming atmosphere as identified in the Consultation Report. Additionally, there is a long history of volunteers assisting at the Complex, and although this is not a requirement, the Tenderer is required to identify its policy in this respect.

Marketing and publicity: Clear, readily accessible and up to date publicity is required to promote the use of the Complex for the widest possible benefit and usage by the community

Youth Outreach: A youth outreach programme is required to provide opportunities for young people across the district to engage in the arts, including courses and training opportunities.

Partnership/community links: The Tenderer is required to establish an appropriate mechanism for consulting with the hirers and the community to foster good relationships, accessibility to the Complex and links with other cultural activities across the District.

Operating Agreement

The Operator will be required to enter into an Operating Agreement with the Council upon completion of the Lease. This document will include the following terms and conditions:

- The Operating Agreement and Lease the will be co-terminus with each other in the event that the Operator/Tenant defaults or breaches under the Lease or Operating Agreement or fails to comply with any agreed Specification.
- The Operating Agreement will automatically expire at the end of the contractual term of the Lease.
- The successful Tenderer will be expected to agree with the Council, the levels and measurement of performance prior to completion of the Lease and Operating Agreement
- The Operator will be required to agree Performance Indicators with the Council which will show how the Complex is performing and meeting the publics requirements. These Performance Indicators will be used to assess the Operators performance over a given period and where they show a deficiency in the Service the Operator will be required to rectify the deficiency within a reasonable time but failure to do so may lead to the treatment of the Operating Agreement and Lease as being in breach of their terms.
- The Council will make quarterly inspections throughout the Contractual Term of the Premises and of the Landlords Fixtures and Fittings, the Plant and Equipment therein.
- The Operator and the Council will meet monthly for the first 6 months and quarterly thereafter throughout the Contractual Term to discuss the progress

of the Complex. The agreed Specification will form the basis of measurement of the performance of the Operator.

- The Operator will be required to produce all necessary and current certificates of inspection of Plant and Equipment on the Premises.
- At the end of each financial year the Operator shall produce their Firms final accounts within six months of the end of the year and provide such other financial information (dependent on the nature of the bid) and in such form as may be required by the Council from time to time.
- The Operator will be required to prepare and produce an updated business plan after the first 3 years of the term.
- The Council are prepared to consider the re-branding and re-naming of the Complex, subject to the theatre being named 'The Stag', but the Council will take into account the publics views following consultation for such a process.
- The Operator will be required to indemnify the Council against any claims, demands, costs, proceedings, loss expenses and any liability arising out of this Agreement as a result of any actions or omissions by the Operator's Company or through any act or default of its servants or its agents.
- The Operator will be required to have regular liaison meetings with any hirers representative body, other hirers not so represented and other community groups using the facilities at the Complex and to fully consult with them at least once in every year and to reasonably take into account requests that fall within the operating framework.
- In the event that the Operator operates the Complex at a profit then the Operator will use that profit to improve its ability to enhance the trading company it operates at the Complex and the Complex itself as a centre for the Arts provided this is in accordance with the company objects or charitable requirements.

Playhouse Method Statements

As indicated in Section 3, the Tenderer is required to show the method of operation of the Complex. The Tenderer is required to complete the Method Statements shown in Section 12 and for ease of evaluation; replies should be included in the Tender document in the same order as set out therein.

SECTION 12
METHOD STATEMENTS

Section 12: Method Statements

METHOD STATEMENTS

(The order set out below does not indicate any priority of importance; the Council is keen to see the whole facility fully used.)

Guidance headings are given to the Method Statements requirements but these can be added to by the Tenderer to demonstrate fully how the operation will be accomplished

Method Statement 1: The Cinema

How will film releases be provided?

Detail programmes to meet the particular identified classes of public:

List any particular format or innovative use(s):

Future:

Method Statement 2: The Theatre

Details of your plans for management of the theatre space

What Productions would feature in the short term?

Would a Christmas play or pantomime be envisaged?

How would the aspirations of a professional company be managed?

How would the aspirations of amateur hirers be managed

Community Links:

Programme of envisaged events:

Innovations:

Future:

Method Statement 3: The Studio

Programme for this area indicating your envisaged uses:

i.e. rehearsal space, conferences, tea dances, disco, sales (subject to consent) etc.

Method Statement 4: Bars and Catering

Proposals for these areas:

Method Statement 5: Business Plan

Please provide (in a separate format if appropriate) your Business Plan detailing your expected income and expenditure over the next five years. This should detail expected monthly forecasts of each facet of the operation including, cash flow projections, balance sheet and likely level of borrowing and what (if any) [Management and/or Service fee](#) would be required.

The Business Plan should also detail what future projects (if any) for the Complex are envisaged, how they would be funded and if these were realised how they would effect subsequent income/expenditure.

The Business Plan should also detail what partnership/ franchise/sub-contracts (if any) that the Tenderer envisages entering into in order to provide the services necessary to operate the Complex.

Please detail your asset maintenance of the Premises and asset maintenance of the plant and equipment situated therein.

Please indicate how any capital improvements will be funded.

Please indicate what any Council [Management and/or Service Fee](#) will be used for.

Method Statement 6: Staffing/use of volunteers

Please provide details of your management structure:

Brief outline of the responsibilities of key posts:

List of other supporting staff posts:

How (if at all) you envisage involving volunteers and in what role:

Method Statements 7: Marketing and publicity and Promotions

Detail how you maximise publicity for the complex:

What ideas are envisaged to maximise ticket sales:

i.e. ticket deals with local restaurants and other promotions & packages.

Please detail any sponsorship arrangements and any “friends” or similar schemes envisaged.

Other:

Method Statement 8: Youth Outreach

Please detail your plans for youth involvement/outreach across the District.

Method Statement 9: Partnerships/Community links and links with hirers, [and proposed consultation arrangements.](#)

Details:

Method Statement 10: Context of operation of the Complex in relation to Council strategies:

Please indicate what contribution the Complex would be able to offer towards meeting the relevant objectives/targets:

e.g. Sevenoaks District Community Plan

Sevenoaks District Community Safety Plan

Young Peoples Action Plan

Cultural Framework currently being developed

Method Statement 11: Proposed improvements to existing services/facilities (if any) including costs and how these will be met.

Method Statement 12: Repairs and maintenance programme (full repairing lease)

Tenderers should set out their maintenance plan for:

- a) how they will maintain the plant and equipment,
- b) how they will maintain the external structure of the premises,
- c) how they will maintain the interior of the premises,
- d) How they will provide for all equipment and plant to meet current safety requirements and what testing regime they will have in place.

Tenderers should note that the above services can be purchased from or through the Council. The Council will require as ongoing matters for copies inspection certificates to be submitted to the Council e.g. lighting bars and lift inspection etc, the Council's approval for capital works, programme of inspections by the Council to ensure building is being kept up to scratch.

Schedules of the current maintenance contracts in place are attached for the Tenderers information at Appendix 1

SECTION 13
HEADS OF TERMS
LEASE

Section 13: Heads of Terms of Lease

The Operator as Tenant will be required to enter into a formal lease with the Council as Landlord before their occupation of the Premises commences. The Lease will be in a standard format made up of the following Heads of Terms:

Demise	The area shown by red colour on the attached location plan
Tenure	For a period of 10, 15, 20 or 25 years from {date to be agreed}. Subject to determination on breach or default of Operating agreement
Guarantor	Guarantor Required for term of lease.
Alienation	Not to assign or sub-let the whole of the building other than allowing use of part of the premises by way of hire {on a non-exclusive licence}. Not to allow any third party into occupation other than to provide part of the service required by the Council and then only with the specific written consent of the Council.
Rent	A rent free period of up to five years will be granted from the commencement of the contractual term. A rent review will then take place to fix a rent following the rent free period and every subsequent five years throughout the term.
Rent Review	<p>The Rent Review will include but is not limited to the following provisions: -</p> <ul style="list-style-type: none"> ▪ Certain defined assumptions: such as Premises have remained the same, no work carried that diminishes rental value etc; ▪ Certain defined Disregards: such as goodwill, any improvement otherwise than is required under the Lease, taxable status of Landlord due to VAT. ▪ Definitions of Expert and President. ▪ Ascertainment of Rent: Rent free for up to five years and then reviewed at the end of the rent free period and every subsequent five years throughout the agreed Term. ▪ Rent will be a sum equal to or greater than the previous rent. ▪ Rents will be determined in the 6 months prior to the Review Dates. The revised will be payable from the Review Dates. ▪ Rent to be agreed between parties or on non agreement settled by an expert.

- [Fees and expenses to be born equally.](#)
- [Back payment where review delayed.](#)
- [Recovery of rent after relaxation of any counter inflation measures.](#)

Business Rates	The occupier will be responsible (unless a statutory exemption is appropriate) for all present and future non domestic rates and taxes and other impositions due in respect of the property or any part thereof
Charging	The occupier shall not charge or mortgage the whole of Premises without the owners consent.
User	To use as a theatre (including community arts) with an ancillary bar a cinema together with a studio operating as a public function area for additional activities and a café for non ancillary use PROVIDED THAT such activities shall not extend to any sports or fitness use as already provided by the Landlords Leisure Partnership with Sencio or for any residential purpose.
Fixture & Fittings	<p>The Tenant shall have authority to use the landlords fixtures and fittings as defined in the schedule to the Lease and shall be responsible for replacing and repairing (as appropriate) such fixtures and fittings which are damaged or have come to the end of their useful life. A record of such replacements is to be maintained at all times. In addition the Tenant will have use of all the plant and equipment in the Premises.</p> <p>The Tenant is required to label and identify any equipment and plant that they own and bring onto the Premises. Any equipment or plant not so marked will be proof of ownership of the Landlord.</p>
Repairs	<p>The premises are taken in the current condition and it is the responsibility of the occupier to undertake any requisite surveys necessary to satisfy themselves of the suitability of the premises for their intended purpose. The Council gives no undertakings in respect of the premises.</p> <p>The Tenant is to be responsible for the maintenance, repair and renewal of the building structure, the Landlords Fixtures and Fittings, the internal areas and all equipment, plant and machinery servicing the building.</p> <p>At the commencement of the term a photographic record will be taken of the condition of the Premises, fixtures and fittings, plant and equipment. The Premises, fixtures, fittings plant and equipment must be handed back to the Landlord in no worse condition than is evidenced by the photographic survey.</p>
Alteration	The Tenant will not make any external, structural, internal or non-structural alteration or create any opening in the external walls or

route media on the external walls without the written consent of the Landlord.

Insurance	<p>The Tenant is to be responsible for the following insurances:</p> <ul style="list-style-type: none"> ➤ that the property structure (internal and external) is adequately insured, and to the Council's satisfaction and standard, against loss and specified perils including plate glass for the full reinstatement cost. ➤ that the contents including all Fixtures and Fittings equipment and plant are fully insured. ➤ that public liability insurance is taken out for a sum of not less than £10 million per claim. <p>That employer's liability insurance is taken out. Prior to the commencement of each financial year, copies of the insurance insurance cover to be provided to the Council.</p>
Services	<p>The occupier will be responsible for maintaining all electricity, gas water, sewage, telecommunications, data and other services and utilities to or from the premises.</p>
Operational Costs	<p>The Tenant will be responsible for all costs relating to the operation of the premises including, but not exclusively, electricity, gas water, sewage, telecommunications, data, fire safety equipment and other services and utilities to or from the premises.</p>
Compliance	<p>The Tenant will be responsible for complying with all legislation, regulations and enactments relating to the operation of the premises, including the obtaining of all necessary licences and the use of service media, machinery and equipment, the carrying out of works and the storage and disposal of materials relating to the Tenants operation.</p>
Car parking	<p>There will be 10 staff car parking spaces allocated to the occupiers of the building as shown blue on the plan. The Landlord will provide parking permits which the Operator and their staff must display when occupying the spaces. All car parking adjacent to the premises is retained within the Council's ownership and does not form part of the leased land. The Council retains the right to vary the location and allocation of these spaces as necessary to ensure the efficient operation of the adjoining public car park.</p>
Rights of Access	<p>The occupier will be granted rights of access and egress from the public highway to the premises and rights from the appropriate fire & exit doors.</p>
Emergencies	<p>The owner reserves the right to require accommodation within the building at any time in connection with Election and Emergency</p>

operations.

Landlord & Tenant	Any agreement will be contracted out of the provisions of the Landlord & Tenant Act 1954 as amended and no statutory or contractual extension to the Lease will be permitted.
Indemnities	The Tenant shall indemnify the Landlord against any loss damage actions demands etc Against negligence, Breach or non-observance of the covenants and conditions (including the Operational Covenants). Against any breach or non-observance which may relate to title.
Determination	The Landlord reserves the right to re-enter the Premises upon the Tenants default. <u>Standard forfeiture provisions will apply.</u>
Council Use	The Council will require use of the Studio area for elections via the existing booking system but also for parliamentary elections upon 17 days notice. The whole Premises may be required in the event of a public emergency. Subject to requisite payment.
Prohibitions	Not to use the Premises for any illegal purposes, <u>cause a nuisance, offence, noise and vibration, overloading, erection of mats and wires, signs and advertisements other than for the cinema theatre and studio.</u> <u>To use the lifts only in accordance with their stated capacities and uses. Only to use fire escapes in emergencies.</u>
Operating Agreement	<u>The Tenant is required to enter into an Operating Agreement with the Council and this Agreement will be co-terminus with the Lease if any default is made under either document.</u>
Licences	<u>The Tenant will be responsible for the renewal for all appropriate licences upon the Complex throughout the Term of the Lease at their own cost.</u>
General	<u>The Landlord reserves the right to include its standard lease terms and such other clauses and conditions as it considers are necessary dependent on the Tender offer.</u>

SECTION 14
FUNDING AGREEMENT
(if applicable)

Section 14: Draft Funding Agreement

The Operator should be aware that whether funding is granted or not will depend on the evaluation of their bid. The draft agreement merely sets out terms that may be appropriate if funding is approved.

Dated _____ 2007

THE DISTRICT COUNCIL OF SEVENOAKS (1)

AND

(2)

Funding Agreement

For the Playhouse Complex, London Road, Sevenoaks

***NOTE: TO BE AMENDED FOLLOWING CABINET DECISION REGARDING
MANAGEMENT/SERVICE FEE AS SET OUT IN SECTION 3.4***

**Legal Section
Council Offices,
Argyle Road,
Sevenoaks,
Kent,
TN13 1HG.**

CONTENTS

1-5	Introduction
6	Interpretation
7	Funding Period and Amount of Funding
8	Payment Arrangements
9	The Purpose of Funding
10	Financial Management and Monitoring
11	Alterations to the Memorandum & Articles
12	Variations and Reviews
13	Value for money
14	Procedure and Timetable for Future Funding
15	Notices
16	Disputes
17	Value Added Tax
18	This Agreement not to constitute a Partnership

Schedules:

Schedule of Tender documents to which the funding is subject

Performance Indicators/standards

The Timetable for Future Funding Application

- 6.6 "Funding " shall mean any sums which may be agreed to be paid under this Agreement
- 6.7 "The Funding Period" shall mean the four year period from to (both dates being inclusive) if any such funding is subsequently agreed between the parties.
- 6.8 "Funding Payments" shall mean any payment made by the Council to the Operator under the terms of this Agreement
- 6.9 "Lease and Operating Agreement" shall mean the Lease and Operating Agreement under which the Premises at which the operation are to be performed pursuant to this Agreement and the term "Lease" and "Operating Agreement" shall have corresponding meanings
- 6.10 "The Operation" shall mean all those services as are identified in the Operating Agreement and Method Statements and for which the Council may make a Funding Payment as set out in this Agreement.
- 6.11 "Premises" shall mean the Playhouse theatre and cinema at London Road Sevenoaks Kent.
- 6.12 "Method Statements" shall mean all those documents referred to in the Tender Documents.
- 6.13 "Tender" means the Tender submitted by the Operator on the {.....} day of {-- --} 2007.
- 6.14 "Tender Documents" means the Tender and those documents contained or referred to in Schedule 1 hereto.

7. Funding Period and the Amount of Funding

- 7.1 For the First Funding Period the amount of funding is {-----} POUNDS (£----.00) per annum and shall be paid by four instalments per annum on the receipt of invoices as follows:-
- 7.1.1 On the Commencement Date the sum of {-----} Pounds (£-----00) subject to such variations as may be agreed between the Council and the Operator .
- 7.1.2 Subsequent payments will be made at three monthly intervals thereafter upon receipt of an invoice.
- 7.2 Subject to the provisions of this Agreement and to the receipt of invoices the Funding for each future Funding Period shall be paid by equal three -monthly instalments in advance.
- 7.3 If the three monthly instalment date is not a Business Day the payment shall be

made on the next Business Day of the following month. (The 3 month interval could still fall on a business day)

- 7.4 The parties agree that the total amount of Funding and the timing of individual instalments may be varied as a consequence of any review carried out in accordance with Clause 12.
- 7.5 If the Operator requests a Funding Payment for any subsequent Funding Period the parties will use reasonable endeavours to agree any further money for such Funding Periods but the Council shall be under no obligation to agree such further money
- 7.6 Without prejudice to the provisions of this Agreement the Council hereby confirms that it's current intention (but not an obligation) to provide future funding to the Operator (if any) and its level although any decision about such funding and its level [will be reviewed every four years.](#)
- 7.7 As an indication of the Council's good faith the proposed approach to and timetable for agreeing Funding for any future Funding Period is set out in this Agreement and the parties agree that the principles of this Agreement (save as to the amount of any Funding) would be likely to apply to any such application for such Funding.

8 Payment Arrangements

- 8.1 The instalments will be allocated and paid to a bank account in the name of the Operator and used solely for the purposes set out in accordance with the provisions of Clause 9 hereof.
- 8.2 Payments will only be made subject to the Council being satisfied that the Operator has properly used (or is intending properly to use) the said Funding in accordance with the terms of this Agreement
- 8.3 It is agreed that wilful breach of this Agreement by the Operator will entitle the Council to terminate this Agreement and that the Council may require repayment of all moneys already paid to the Operator which have not been spent at the date of such termination or was not applied by the Operator in accordance with the provisions of 9.1 hereof.
- 8.4 At any time when a payment falls to be made by one party to the other the parties may agree to set off any sum or sums due to the payment party from the other.

9. The Purpose of the Funding

- 9.1 The Council has provided the Operator with a copy of the Council's Community Plan and has set out in the Operating Agreement the specific entertainment and cultural objectives which the Operator has hereby agreed to assist in delivering by providing Services at the [Complex and as outreach across the District](#) subject to

the Lease and Operating Agreement within the district of Sevenoaks (including such ancillary services which are specified in the said Operating Agreement and as set down in the Operator's Method Statements to the Tender and the Performance Standards subsequently agreed between the parties and referred to in Schedule 2 hereto.)

- 9.2 The Operator has prepared the Approved Business Plan showing how it will provide the entertainment and cultural and other services referred to in Clause 9.1
- 9.3 The purpose of the Funding is a [management/service fee](#) to the Operator for the provision of those services as are more particularly specified in the Approved Business Plan and the Operating Agreement by way of enabling the Council to fulfil its statutory functions under Section 19(3) of the Local Government (Miscellaneous Provisions) Act 1976 Section 145 of the Local Government Act 1972 Section 2 of the Local Government Act 2000 and Section 3 of the Local Government Act 1999
- 9.4 Provided that the Council is satisfied that the Operator has properly used (and is intending properly to use) the said Funding in accordance with the terms of this Agreement the Council will make payment of each successive instalment that it agrees to make.

10. Financial Management and Monitoring

- 10.1 The Operator shall operate all customary financial management systems in accordance with established best standards of accounting practice. In particular their accounts will be prepared in accordance with the requirements of the Companies Act 1985 or the Charities Act 1993 and all applicable regulations and guidance made or issued thereunder and (without prejudice to the foregoing) will follow the requirements of the Statement of Recommended Practice (Accounting by Charities), identifying as appropriate any exceptions to the Statement
- 10.2 The Operator shall maintain such financial operational and service records as shall be necessary to establish that the terms of this Agreement are being fulfilled and shall on request forthwith make such records available to the Council or its representatives (including its internal or external auditor) for such purpose.
- 10.3 Without prejudice to the generality of the foregoing the Operator shall provide such information to the Council and at such intervals as shall be agreed from time to time as part of the regular programme for monitoring the Operator's performance.
- 10.4 The Operator shall submit unaudited accounts to the Council as soon as they are available and in any case not later than 3 months after the end of the Operator's financial year.
- 10.5 The Operator shall submit audited accounts to the Council as soon as they are

available and in any case not later than 6 months after the end of the Operator's financial year.

11 Alterations to Rules

- 11.1 The Operator agrees that it will not alter or amend its Rules or [Company Objectives](#) without prior consultation with the Council
- 11.2 The Operator agrees that it will promptly send the Council a copy of the amended Rules after they have been altered.

12. Variations, Review and Future Funding

- 12.1 The parties agree that they will have regular and general reviews of this Agreement and without prejudice to the generality of this clause any such review will consider whether the Council's strategic objectives (as determined by the Council from time to time and as currently set out in the Council's Community Plan) are being met the level of expenses being incurred by the Operator the income being achieved and consequentially whether or not the current past and any proposed level of Funding is at the right level and without prejudice to the generality of this provision that the first such review will [commence on \(.....\) and relate to the period from the Commencement Date to such date \(.....\) and the second review shall take place on \(.....\)](#).
- 12.2 In any subsequent Funding Period there will be reviews commencing on (.....)
- 12.3 The parties further agree that if either party considers that there is an urgent need to discuss the operation of this Agreement that they will meet expeditiously to discuss the implications of any such changes and to use reasonable endeavours to agree all necessary variations to the purposes for which the Funding may be used including any required amendments to the Approved Business Plan.
- 12.4 The Operator will provide all required information (without making any charge) and fully cooperate with the Council so that the Council can carry out the reviews efficiently and expeditiously
- 12.5 Without prejudice to the generality of Clauses 10.1, 10.2 and 10.3 if either party is in breach of any of its obligations in this Agreement or of the Lease or the Operating Agreement and the Method Statements or any other arrangements between the parties they will meet expeditiously to discuss the implications of such breaches but such meeting shall not fetter the Council in determining the Lease and Operating Agreement if it considers the ground for so doing have arisen.

13. Value for money

- 13.1 The Council is obliged to carry out its duties with regard to Value for Money and in accordance with the statutory duty or "Best Value" within the framework of the duties of local authorities to make arrangements to secure continuous improvement in the delivery of services as required by the Local Government Act 1999 and when considering any future Funding applications and whether to make any further contributions it will take into account each of the following:-
- 13.1.1 whether the Operator can demonstrate that it is delivering the best value operation.
 - 13.1.2 whether continuing to provide any funding to the Operator is consistent with the Council's duties relating to Best Value;
 - 13.1.2 if the Operator is shown to be making an operating profit upon the Premises.
- 13.2 In order to enable the Parties to demonstrate the Value for Money and Best Value principles as set out above the Parties will seek to agree a mutually acceptable method of evaluating whether Best Value is being delivered including consideration of appropriate benchmarking exercises.

14. The Procedure and Timetable for Future Funding Applications

- 14.1 The Procedure and Timetable for the Funding arrangements for each subsequent Funding Period will be as set out in Schedule 3 and the Parties will use all reasonable endeavours to meet this timetable.
- 14.2 It is a Charitable organisation as defined in the Charities Act 1993 and will remain a charitable organisation throughout the Funding Period.
- 14.3 The Operator warrants that none of the members of its Management Board is a local authority associated person within the definition of such person in Section 69(5) of the Act and that it will use its best endeavours to prevent any member of its Management Board from so becoming

15. Notices

- 15.1 Any notice to be given to the Operator pursuant to this Agreement shall be in writing and shall be served either by sending it by first class recorded delivery post to or leaving it at the Operator's registered offices (and facsimile equipment may be used for this purpose provided written confirmation is posted within twenty four hours of the facsimile transmission)
- 15.2 Any notice to be given to the Council under the terms of the Agreement shall be in writing and shall be served either by sending it by first class recorded delivery post to or leaving it at the Council Offices Argyle Road Sevenoaks Kent TN13 1HG

addressed to the Chief Executive (or such other Officer or place as may be notified by the Council to the Operator) (and facsimile equipment may be used for this purpose provided written confirmation is posted within twenty four hours of the facsimile transmission)

- 15.3 Any notice shall be deemed to be given when it is delivered at the address of the recipient or in the case of a facsimile transmission at the time when it is transmitted (but in such case subject to the sending receiving an acknowledgement of transmission showing the recipients correct connection ID)
- 15.4 A notice sent by first class post shall be deemed to have been delivered on the second working day following the date of posting
- 15.5 The Operator shall immediately notify the Council of any change to its registered office
- 15.6 The Council shall immediately notify the Operator of any change to its address for service of notices set out in 15.2

16. Disputes

If any dispute arises out of this Agreement (save as set out below) the Parties shall have the option to settle it by mediation in accordance with the Centre for Dispute Resolution ("CEDR") Model Mediation Procedure ("the Model Procedure") and the following provisions of this sub-clause;

- 16.1 Either party shall give notice ("the ADR Notice") to the other requesting a mediation in accordance with this sub-clause and a copy of the ADR Notice shall be sent to CEDR
- 16.2 The Model Procedure shall be amended to take account of any relevant provisions in this Agreement or any other additional agreement which the parties may enter into in relation to the conduct of mediation
- 16.3 If there is any question on the conduct of the mediation (including as to the nomination of the mediator) upon which the Parties cannot agree within 14 days from the date of the ADR Notice CEDR will at the request of either party (and after consultation with the Parties) decide such question
- 16.4 The mediation shall start not later than 28 days after the date of the ADR Notice

17 Value Added Tax

- 17.1 Any payments made in accordance with this Agreement are exclusive of Value Added Tax (CVAT) and VAT shall be added to any payments where appropriate
- 17.2 In respect of the Funding Payments on receipt of any valid VAT invoice from the Operator the Council shall pay VAT to the Operator in addition to the other

sums payable in accordance with this Agreement

17.3 The Operator is the Principal and nothing in this Agreement shall constitute the Operator the agent of the Council for the purposes of VAT

18. This Agreement does not constitute a partnership

None of the provisions of this Agreement shall be deemed to constitute a partnership or create a relationship of principal and agent between the Parties and neither of them shall have any authority to bind the other in any way

IN WITNESS whereof the Parties hereto have caused their respective Common Seals to be hereunto affixed the day and year first before written

Schedule 1

Detail of Tender Documents

As per Tender to be detailed

Schedule 2

Performance Indicators to be agreed

Schedule 3

Time Table for future funding to be agreed

Schedule 4

Approved Business Plan

**THE COMMON SEAL of THE DISTRICT
COUNCIL OF SEVENOAKS** was
hereunto affixed in the presence of:

Authorised Signatory

Authorised Signatory

The Common Seal of the Operator

APPENDIX 1

CURRENT MAINTENANCE CONTRACTS

To be included in the final tender document

