

**Agreement for Organisation and Management of
..... outdoor cinema**

DATE:

BETWEEN:

(1) **RBG KEW ENTERPRISES LIMITED**, a company registered in England & Wales with company number 2798886 having its registered office at The Royal Botanic Gardens, Kew, Richmond, Surrey TW9 3AB (the “**Customer**”, “**Enterprises**”, “**Kew Enterprises**”); and

(2) **THE COMPANY**

BACKGROUND:

(A) Enterprises is a trading company wholly owned by the Board of Trustees of the Royal Botanic Gardens, Kew.

(B) **THE COMPANY** is

(C) Enterprises wishes to host Outdoor Cinema in late summer in Kew Gardens (the “Gardens”) on four nights each year, during the period 2017-2019 with a possible extension for two further years.

(D) The Parties wish to enter an agreement under which **THE COMPANY** will organise and promote the Outdoor Cinema and will manage all aspects of the ticketing, marketing and production of the Events.

FORM OF CONTRACT

The Parties each agree to the terms of the Contract, which expression includes the Special Conditions below, and any documents attached as schedules.

SPECIAL CONDITIONS

1. DEFINITIONS

In these Special Conditions, the following definitions apply:

“**Event**” means each Outdoor Cinema screening taking place at the Gardens under this Agreement.

“Event Dates” means the dates on which the Event will be open to the public being {add dates}

“Infrastructure” means the screen, projection equipment, sound system, generator, barriers, seats, tents, catering and bar units, lighting, signage and any similar equipment which shall be set up on a temporary basis within the Gardens for the purposes of the Events.

“Hire Period” means [add dates] 2017 and equivalent dates to be agreed between the Parties for subsequent years

“Outdoor Cinema” means screening films on temporary event Infrastructure set-up in the Gardens for the benefit of visitors who are paying to watch the films outside of normal Gardens opening hours.

AGREED TERMS

1. EVENT

- 1.1 The area for the Event will be within Kew Gardens, as further set out in Schedule 1 (known as “the Permitted Areas”).
- 1.2 This is separately ticketed event and a normal ticket into Kew Gardens will not include access to the Event. Ticket information as further set out in Schedule 2
- 1.3 The Event capacity shall be limited to a maximum of 2500 people per performance, or as otherwise revised in accordance with Clause 1.4.
- 1.4 For health and safety reasons, the capacities in Clause 1.3 may need to be assessed and revised. THE COMPANY agrees and acknowledges that whilst Enterprises shall consult with THE COMPANY in this regard, any decision by Enterprises shall be final and binding. Enterprises shall communicate verbally to THE COMPANY any revised capacities, and the date and time that such revised capacities shall apply from, as soon as reasonably practicable, confirming the same in writing (which may include email)
- 1.5 Any breach of Clause 1.3 shall be considered a material breach of this Agreement.

2. THE COMPANY OBLIGATIONS

- 2.1 THE COMPANY is, and shall remain at all times, wholly responsible for the Event production and management and agrees to organise and deliver all aspects of the Event on the Event Dates including:
 - 2.1.1 Providing the Event to the public as principal and being directly responsible to the public for the production, its delivery and all related activities such as ticket sales, changes, cancellations and external communications in respect of the same;
 - 2.1.2 Identifying potential films for the agreement of Enterprises (not to be unreasonably withheld) and securing the appropriate rights and permissions and paying the appropriate charges to film rights holders.

- 2.1.3 Coordinating, booking and producing all marketing and promotions required for the Events except where Enterprises has agreed in writing to carry out marketing activity.
 - 2.1.4 Ensuring that all marketing materials and all use of RBG Kew brand marks comply with RBG Kew Brand Guidelines and seeking Enterprises approval of THE COMPANY'S marketing materials and uses of Kew brand marks in accordance with clause 2.13.7
 - 2.1.5 Procuring and managing all suppliers, sub-contractors and ticket sales, although exceptionally the parties may agree that Enterprises shall be the procuring party for certain items on behalf of THE COMPANY, subject to Kew Enterprises being promptly reimbursed for this.
 - 2.1.6 Where appropriate, procuring an appropriately qualified structural engineer to undertake the assessment and provision of written advice and calculations on the installation and erection of any Infrastructure, including but not limited to, wind and weight loadings to ensure no injury or damage is caused to either people or property.
 - 2.1.7 Organising all logistical and operational matters to do with the Event, including the management and writing of all of health & safety documentation and managing all activities on site.
 - 2.1.8 Budget management, accounting, cash security, payment of all suppliers.
 - 2.1.9 To provide sufficient staffing and stewards for the purposes of managing the Events successfully including appropriate visitor and technical management.
 - 2.1.10 To procure that THE COMPANY's ticket agent,, transfers the following information to Enterprises and RBG Kew, all of which shall be managed in accordance with Clause 9: the contact details of any ticket purchaser who has explicitly consented to their details being passed to Enterprises and RBG Kew for marketing purposes, in accordance with the separate consent wording agreed between Enterprises and See Tickets.
 - 2.1.11 Keeping Enterprises fully and promptly informed as to all matters pertaining to the Event.
 - 2.1.12 Seeking Enterprises' approval (not to be unreasonably withheld) for all contractors, the general look and feel of the Event, the site layout plans, the logistical arrangements for the Event including the Infrastructure and use of any equipment, any works taking place in the Permitted Area and any other matters that might impact upon the reputation of RBG Kew or impact physically upon Kew Gardens.
 - 2.1.13 Paying to Enterprises the amounts described in clause 4 (Fees).
- 2.2 THE COMPANY agrees to carry out its activities under this agreement, and procure that all suppliers and sub-contractors carry out their activities, in accordance with:
- 2.2.1 all applicable codes of practice at Kew Gardens, including without limitation the Contractors Health, Safety, Environment and Sustainability Code of Practice (the "Code").
 - 2.2.2 any sustainability criteria provided by Enterprises.

- 2.2.3 all applicable laws and regulations (including, without limitation, the Equality Act 2010, the Human Rights Act 1998, the Modern Slavery Act 2015 and the Bribery Act 2010 along with any Immigration Act requirements in respect of work visas and rights to work in the UK, all relevant employment legislation, health and safety legislation and any other statutory or local authority requirements in relation to the Event). In the event of THE COMPANY receiving any correspondence or notification from a local authority or other relevant regulator, it shall immediately contact Enterprises to inform them and send a copy to Enterprises; and
- 2.2.4 the lawful and reasonable instructions of Enterprises or RBG Kew, from time to time.
- 2.3 In organising, managing and delivering the Event, THE COMPANY shall, at all times:
- 2.3.1 liaise and co-operate with RBG Kew and Enterprises, and their staff, agents, contractors and sub-contractors; and
- 2.3.2 take all reasonable steps to ensure the safety of all visitors and staff at Kew Gardens, including installing any necessary signs or warnings required to inform staff and/or visitors of specific risks arising as a result of the Event, and apply appropriate crowd management procedures at all times, during the Events themselves, when receiving visitors attending the Event at the gates, and guiding them through the Gardens to and from the Event.
- 2.4 THE COMPANY shall, and shall procure that any subcontractors, shall, carry out all cleaning and disposal of waste in accordance with Enterprises' requirements as notified from time to time.
- 2.5 THE COMPANY warrants and represents that
- 2.5.1 it owns, or has otherwise obtained written and valid licences for, any Intellectual Property Rights utilised in relation to the Event, and shall provide appropriate documentation to demonstrate the same if requested by Enterprises; and
- 2.5.2 any use by Enterprises or RBG Kew of any names, images, references, or other information relating to the Event that is provided by THE COMPANY to Enterprises or RBG Kew will not infringe the rights of any third party.
- 2.6 For this purposes of this Agreement, "Intellectual Property Rights" means patents, rights to inventions, copyright and related rights, moral rights, trade marks, trade names and domain names, rights in get-up, rights in goodwill or to sue for passing off, rights in designs, rights in computer software, database rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications (or rights to apply) for, and renewals or extensions of, such rights and all similar or equivalent rights or forms of protection which may now or in the future subsist in any part of the world.
- 2.7 THE COMPANY shall carry out all appropriate risk assessments prior to the start of the set-up period commencing on [add date] to ensure compliance with its obligations under this agreement. THE COMPANY shall provide a copy of the risk assessments, together with a method statement outlining the proposed manner of delivery of the Event, to include the setting up of the Infrastructure, stewarding and crowd management procedures, to Enterprises by [add date]. THE COMPANY acknowledges that it will not be permitted to proceed with the Event until such documentation is produced and approved by Enterprises.

- 2.8 Enterprises shall have the right, exercisable at any time, to inspect the Permitted Area and the Event. THE COMPANY shall immediately comply with all reasonable instructions issued by Enterprises as a result of such inspection.
- 2.9 Notwithstanding that the Event or any aspect thereof or the location of the Permitted Area may have been the subject of any instruction, review, approval, acknowledgement or inspection by Enterprises or any other body, THE COMPANY shall not be relieved from any liability or obligation under this Agreement.
- 2.10 THE COMPANY shall effect and maintain with a reputable insurance company insurance policies which:
- 2.10.1 include death or personal injury, or loss of or damage to property;
 - 2.10.2 are in existence throughout the Hire Period;
 - 2.10.3 include public liability insurance for a sum of not less than ten million pounds (£10,000,000) for each and every occurrence or series of occurrences arising out of any one occurrence;
 - 2.10.4 do not exclude or limit liability to the other Party for death or personal injury caused by its negligence;
 - 2.10.5 include product liability insurance for a sum of not less than ten million pounds (£10,000,000) for each and every occurrence or series of occurrences arising out of any one occurrence;
 - 2.10.6 include employer's liability insurance in respect of the employment of staff working at the Site during each Hire Period in accordance with any legal requirement for the time being in force for a sum of not less than ten million pounds (£10,000,000) for each and every occurrence or series of occurrences arising out of any one occurrence; and
- 2.11 The Event Organiser shall produce to Enterprises, on request, summaries of all insurance policies referred to in Clause x.
- 2.12 THE COMPANY shall indemnify Enterprises against all costs, claims, liabilities and expenses arising out of:
- 2.12.1 The acts and omissions of THE COMPANY, its subcontractors and their activities under this Agreement, including without limitation any breach of this Agreement, any claim in respect of injury or sickness, disease or death of any person, loss of, or damage to, any property, equipment, props or costumes, or claim or allegation of infringement of any Intellectual Property Rights arising out of or in relation to the Event, and / or cancellation of the Event or any individual shows, unless such cancellation is solely attributable to the act or omission of Enterprises; and
 - 2.12.2 THE COMPANY or its subcontractors failure to comply with all applicable laws and regulations, the Code and any other policies and procedures that Enterprises may communicate to THE COMPANY from time to time.
- 2.13 THE COMPANY acknowledges and agrees that:
- 2.13.1 It shall use the Permitted Area as a licensee and that no relationship of landlord and tenant is created between it and Enterprises by this Agreement;

- 2.13.2 RBG Kew retains control, possession and management of the Permitted Area and THE COMPANY has no right to exclude Enterprises or RBG Kew from any part of the Permitted Area;
- 2.13.3 the licence to access the Permitted Area granted by this Agreement is personal to THE COMPANY and is not assignable and the rights given in this Agreement may only be exercised by THE COMPANY;
- 2.13.4 it shall ensure that all subcontractors are appropriately qualified;
- 2.13.5 it shall not use, nor allow Kew Gardens to be used during the Event, for any illegal, injurious, immoral or offensive purposes or in such a way as to cause any nuisance, damage, disturbance, annoyance inconvenience or interference to The Board of Trustees of the Royal Botanic Gardens, Kew or Kew Enterprises, its reputation, to any neighbouring or adjoining property, or to any other person or otherwise negatively impact Kew Gardens' licensing arrangements with the local authority;
- 2.13.6 it shall co-operate with Kew Enterprises and the Board of Trustees of the Royal Botanic Gardens, Kew, to preserve security at Kew Gardens and in particular, will comply with any policies, procedures and instructions relating to security;
- 2.13.7 it shall provide all marketing, publicity and ticketing materials related to the Event to Kew for approval no later than forty eight hours (48) hours prior to publication and shall not make any public statement or publish any such materials without Enterprises' prior written approval (which may be provided via email); and
- 2.13.8 in exceptional circumstances, including adverse weather, pest and disease outbreak and other events beyond the reasonable control of Enterprises, RBG Kew may close Kew Gardens (in whole or in part). Enterprises shall inform THE COMPANY as soon as reasonably practicable upon becoming aware of circumstances necessitating closure of Kew Gardens and shall keep THE COMPANY advised of the situation. Enterprises shall have no liability to THE COMPANY arising out of any such closure.
- 2.13.9 In the event that any closure occurs as set out in Clause 2.13.8, or the Event or individuals shows are delayed, postponed or cancelled for any other reason, THE COMPANY shall be responsible for managing and communicating the same to the public and dealing with related queries, all of which shall be undertaken in a professional and courteous manner, and as soon as reasonably practicable. In the event that such communications are being made within 48 hours of a performance, prior approval of communications by Enterprises (as set out in Clause 2.13.7) shall not be required.
- 2.13.10 It will at its own cost provide Enterprises with 25 complimentary general admission tickets for each Event.

3. ROLE OF ENTERPRISES

3.1 Enterprises agrees to :

- 3.1.1 Allow THE COMPANY use of the Permitted Area for the Event, and to ensure that the Permitted Area is freely available to hold the Event on the event dates and freely accessible to THE COMPANY and the personnel, suppliers etc for a reasonable period before and after the event.

- 3.1.2 To provide all reasonable assistance to THE COMPANY in the performance of their role.
- 3.1.3 To carry out all necessary conversations and consultations with local residents, the licensing authority and the responsible authorities.
- 3.1.4 To provide introductions to key teams and individuals at RBG Kew and to coordinate and facilitate conversations between THE COMPANY and RBG Kew.
- 3.1.5 To grant THE COMPANY a non-exclusive licence to use the Kew brand marks for the purpose of the Event, such licence to expire on conclusion of the Event.
- 3.1.6 To support THE COMPANY in marketing the Event with the use of RBG Kew's own marketing assets, including customer and member mailing lists (subject to data protection laws), www.kew.org, Kew social media accounts, Kew publications and the Kew press relations team, in accordance with Schedule 4.
- 3.1.7 To seek the agreement of THE COMPANY at the earliest reasonable opportunity of any cost associated with holding the Event at Kew Gardens (such as costs from other departments of RBG Kew), such agreement not to be unreasonably withheld; and
- 3.1.8 To maintain a Premises Licence for Kew Gardens appropriate for the Event and sufficient to meet RBG Kew obligations herein.

4. COMMERCIAL TERMS

- 4.1 The prices for tickets in respect of the Event are set out in Schedule 2.
- 4.2 In consideration of its use of the Permitted Area for the purpose of the Event, THE COMPANY agrees that Enterprises shall be entitled to the following Fees :
 - 4.2.1 [Insert] plus VAT minimum guarantee each year in accordance with Schedule 2.
 - 4.2.2 [Insert] percent commission each year in accordance with Schedule 2 on all income earned in relation to the Event net of VAT, including all ticket income from whatever source, all sponsorship income relating solely to the Event, all food and beverage, retail and any other concession income.
 - 4.2.3 [any other] ...
- 4.3 Following receipt of a valid invoice, THE COMPANY shall pay to Enterprises an amount equal to:
 - 4.3.1 The Fees set out in Clause 4.2; and
 - 4.3.2 the cost incurred by Enterprises of facilitating the Event (where such costs have been agreed as per clause x) which shall include, but not be limited to any reparation costs in relation to the Permitted Area after the Event has ended. Kew shall undertake any such reparations that are required to ensure the Permitted Area is repaired to the standard existing before the Event and shall invoice THE COMPANY for the same; less
- 4.4 THE COMPANY shall submit a report to Enterprises at fortnightly intervals providing the breakdown of ticket sales per performance, per ticket type, and overall.

- 4.5 ENTERPRISES may request additional relevant information at any time either as a one off request or on an on-going basis and THE COMPANY shall comply with all reasonable requests to provide further information in the timescale requested.

5 PAYMENT TERMS

- 5.1 The Parties agree to provide each other with a full, written account of any commission on ticket or merchandising or other product sales for which they are responsible no later than The final account shall include a calculation of the financial reconciliation of all commission payable on revenue from sales of products and ticket sales.
- 5.2 Following receipt of the final accounts referred to above, Enterprises shall issue to THE COMPANY an invoice for any fees or monies payable to RBG Kew under Clause 4 and THE COMPANY agrees to pay any invoices received within thirty (30) days of the date of receipt.
- 5.3 THE COMPANY shall keep separate and detailed records of all sales in relation to the Event to enable Enterprises to check the accuracy of the information due from THE COMPANY. Enterprises or any other person authorised by Enterprises, is, on reasonable notice entitled to inspect both THE COMPANY and any subcontractors' records during normal business hours and to take away copies in order to verify the information provided by THE COMPANY. If such inspection or audit should reveal a discrepancy in the commission paid from those payable under this Agreement, THE COMPANY shall immediately make up the shortfall and reimburse Enterprises in respect of any professional charges incurred for such audit or inspection. This right of inspection shall remain in effect for a period of three years after termination of this agreement.
- 5.4 Without prejudice to any rights that exist under the Late Payment of Commercial Debts (Interest) Act 1998 if there shall be any delay in the payment of any sums due to Enterprises under this Agreement for whatever reason, THE COMPANY shall pay interest on the full amount outstanding at the rate of 2% above the Base Rate of The Royal Bank of Scotland Plc from time to time, from the due date until the date of actual payment. Partial payments are applied first against interest accrued to the date of payment and then against any payments outstanding. This clause shall not apply to payments that are disputed in good faith.

6. CONTRACT PERIOD

- 6.1 This Agreement shall take effect on the date of signature and subject to the provisions for earlier termination detailed herein, shall continue in full force and effect, until 90 days after the Hire Period in 2019 at which point it shall expire automatically unless the term has been extended in accordance with clause 6.2 ("Contract Period").
- 6.2 The Parties shall enter into good faith discussions by no later than 31st October 2019 as to whether to extend the Contract Period by 12 months ('a First Extension'). If the Parties agree to a First Extension, they shall enter into a contract in relation to thereto as soon as is reasonably possible following such discussions and in the event of a First Extension the parties shall enter into good faith negotiations by no later than 31st October 2020 as to whether to extend the Contract Period by a second period of 12 months. If the parties agree to extend the Contract Period for a second time they shall enter into a contract in relation thereto as soon as reasonably possible following such discussions.

6.3 For the avoidance of doubt, neither Party shall be obliged to enter into any such contract.

7 TERMINATION

- 7.1 Enterprises may terminate this Agreement immediately by giving notice to THE COMPANY if:
- 7.1.1 THE COMPANY commits any breach of this Agreement which is not capable of being remedied;
 - 7.1.2 THE COMPANY commits any breach of this Agreement which is capable of being remedied and THE COMPANY fails to remedy the breach within 24 hours of receipt of notice from Enterprises requiring THE COMPANY to remedy the breach;
 - 7.1.3 THE COMPANY becomes insolvent, is adjudicated bankrupt or compounds with or makes any arrangements or makes a general assignment for the benefits of its creditors; or
 - 7.1.4 THE COMPANY compulsorily or voluntarily enters into liquidation except for the purpose of a bona fide reconstruction or amalgamation and with the prior written approval of Enterprises; or
 - 7.1.5 THE COMPANY has a receiver, manager, administrator or administrative receiver appointed over the whole or a substantial part of its undertakings or assets; or
 - 7.1.6 There is a change in control of THE COMPANY which, in the sole opinion of Enterprises materially affects the ability of THE COMPANY to carry out its obligations under this Agreement in a manner satisfactory to Enterprises;
 - 7.1.7 THE COMPANY ceases or threatens to cease or carry on business; or
 - 7.1.8 THE COMPANY does anything which in the reasonable opinion of Enterprises brings or is likely to bring the reputation of Enterprises or RBG Kew into disrepute.
- 7.2 Without limiting its other rights or remedies, Enterprises may terminate this Agreement by giving THE COMPANY one month's written notice without cause, in which case Enterprises shall pay THE COMPANY fair and reasonable compensation commensurate with the Services properly performed and expenses incurred or to be incurred that are rechargeable under the Contract and cannot be recovered or mitigated by the Supplier as at the date of notice of termination.
- 7.3 Where advance payments have already been paid to THE COMPANY, or monies are being held by THE COMPANY on behalf of Enterprises under the Agreement, and such payments exceed the amount properly due to THE COMPANY or the Services delivered as at the date of notice of termination, any such excess shall be promptly refunded to Enterprises by THE COMPANY.
- 7.4 On termination of the Contract for any reason
- 7.4.1 THE COMPANY shall immediately deliver and return all of Enterprises' Materials. If THE COMPANY fails to do so, then Enterprises may without limiting its other rights or remedies enter THE COMPANY's premises and take possession of them. Until they have been returned or delivered, THE COMPANY shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this Agreement; and

7.4.2 The accrued rights, remedies, obligations and liabilities of the parties as at termination shall not be affected, including the right to claim damages in respect of any breach of the Agreement which existed at or before the date of termination; and

7.4.3 Enterprises shall have no liability to THE COMPANY for any damage or loss, costs or expenses arising out of any performance or non-performance by Enterprises of any of its obligations under this agreement (whether by virtue of negligence or otherwise) which falls within any of the following categories:

7.4.3.1 indirect, consequential or special loss or damage of any nature;

7.4.3.2 loss or damage suffered by third parties;

7.4.3.3 economic loss;

7.4.3.4 loss of business opportunity;

7.4.3.5 loss of interest or revenue;

7.4.3.6 damage to goodwill;

7.4.3.7 loss of profit (whether actual or anticipated); or

7.4.3.8 loss of data, equipment or property.

7.5 The expiry or termination of this Agreement shall not affect any provisions of this Agreement which is expressed or intended to survive or operate in the event of expiry or termination of this Agreement.

8 MEETINGS

8.1 The parties agree to send representatives to regular scheduled co-ordination meetings both via phone and in person when in the country and to keep each other fully and effectively informed at all times (i.e. by e-mail, or minute) of key actions, such as:

- booking films
- public announcements, PR and marketing about the Event
- putting tickets on sale
- appointing key contractors
- discussions with statutory agencies
- any decisions likely to have a significant impact on public safety planning
- agreement of sponsorship deals
- agreement relating to commercial rights
- and any similar matters

9. ANNUAL CONTRACT REVIEW

9.1 Following the Hire Period at the end of each year Enterprises will carry out a review of that year's Event by applying the scoring methodology to the evaluation criteria as set out in the Balanced Scorecard to produce an overall score. THE COMPANY shall ensure that the Events for the year in question meet or exceed the minimum acceptable performance measure set out in the Balanced Scorecard.

9.2 If the score for the year is below the threshold score of 72 then THE COMPANY shall be deemed to have committed a material breach of its obligations under this Contract and

Enterprises may terminate this Contract by giving written notice to THE COMPANY and the provisions of clause 7 shall apply.

10. CONFIDENTIALITY AND FREEDOM OF INFORMATION

- 10.1 A party ("Receiving Party") shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the Receiving Party by the other party ("Disclosing Party"), its employees, agents or subcontractors, and any other confidential information concerning the Disclosing Party's business or its products or its services which the Receiving Party may obtain. The Receiving Party shall restrict disclosure of such confidential information to such of its employees, agents or subcontractors as need to know it for the purpose of discharging the Receiving Party's obligations under the Contract, and shall ensure that such employees, agents or subcontractors are subject to obligations of confidentiality corresponding to those which bind the Receiving Party. This clause 8 shall survive termination of the Contract.
- 10.2 THE COMPANY acknowledges that Enterprises (and its parent company, RBG, Kew) are both subject to the requirements of, and may be obliged to disclose information in accordance with, the Freedom of Information Act 2000 and any subordinate legislation made under that Act from time to time and the Environmental Information Regulations 2004 together with any guidance and/or codes of practice issued by the Information Commissioner or the relevant government department in relation to such legislation and regulations (the Freedom of Information Act and the Environmental Information Regulations 2004).

11. DATA PROTECTION

11.1 Definitions :

Data Controller: has the meaning set out in section 1(1) of the Data Protection Act 1998.

Data Subject: an individual who is the subject of Personal Data.

Personal Data: has the meaning set out in section 1(1) of the Data Protection Act 1998 and relates only to personal data, or any part of such personal data, in respect of which THE COMPANY is the Data Controller and in relation to which the Processor is providing services under this agreement.

Processor : means Enterprises

Processing and process: have the meaning set out in section 1(1) of the Data Protection Act 1998

- 11.2 Each party warrants to the other that it will process any Personal Data in compliance with all applicable laws, enactments, regulations, orders, standards and other similar instruments.
- 11.3 The Processor(s) warrant that, having regard to the state of technological development and the cost of implementing any measures, they will:
- 11.3.1 take reasonable steps to ensure the reliability of all employees or subcontractors who have access to the Personal Data

11.3.2 take appropriate technical and organisational measures against the unauthorised or unlawful processing of Personal Data and against the accidental loss or destruction of, or damage to, Personal Data to ensure a level of security appropriate to:

11.3.2.1 the harm that might result from such unauthorised or unlawful processing or accidental loss, destruction or damage; and

11.3.2.2 the nature of the data to be protected

11.3.3 take reasonable steps to ensure compliance with those measures.

11.4 Enterprises and THE COMPANY agree that once the marketing information set out in Clause 2.1.10.2 (relating to anyone who has explicitly consented to their details also being passed to Enterprises and RBG Kew for Kew marketing) has been provided by ... to Enterprises, THE COMPANY shall no longer be the Data Controller in respect of that personal data *to the extent* that it is used by Kew for marketing purposes not connected with the Event. Thereafter, Kew shall be responsible for ensuring its communications with the data subjects for Kew marketing purposes not connected with the Event, are compliant with the Data Protection Act 1998 and any other relevant legislation or enactments.

11.5 Each party agrees to indemnify and keep indemnified and defend at its own expense the other party against all costs, claims, damages or expenses incurred by the other party or for which the other party may become liable due to any failure by the first party or its employees or agents to comply with any of its obligations under this Clause.

12. MISCELLANEOUS

12.1 Notwithstanding any other provision of this agreement, the terms 'acceptance' 'approval' 'consent' or similar when used in the context of any acceptance, approval or consent to be given by Enterprises has the meaning 'acceptance of general principles only' and no such acceptance, approval or consent shall diminish or relieve THE COMPANY from any obligations or liabilities under this agreement (save for the obligation to seek or obtain such acceptance, approval or consent).

12.2 Force Majeure: If and to the extent that either party is hindered or prevented by circumstances beyond its reasonable control from performing any of its obligations under this Agreement ('Force Majeure') and promptly gives notice to the other party, giving full particulars of the circumstances in question (including such evidence in verification of those circumstances as it can reasonably give and specifying the period for which it is estimated that they will continue), then the party so affected shall be relieved of liability to the other for failure to perform such obligations, but shall nevertheless use its best endeavours to resume full performance of its obligations without avoidable delay, If such event or circumstances prevent THE COMPANY from carrying out its activities under the agreement, Enterprises shall have the right, without limiting its other rights or remedies, to terminate the agreement with immediate effect by giving written notice to THE COMPANY

12.3 Waiver: No failure or delay by either party to this agreement in exercising any right, power, privilege or remedy under this agreement shall impair or operate as a waiver of such right, power, privilege or remedy. The rights of either party arising out of any provision of this agreement or any breach of this agreement shall not be waived except in writing. A waiver by

either party of any of its rights under this agreement or of any breach of this agreement shall not be construed as a waiver of any other rights or of any further breach.

- 12.4 Entire Agreement: This agreement, together with any documents and guidelines referred to in it, constitutes the whole agreement between the parties relating to its subject matter and supersedes any prior drafts, agreements, undertakings, representations, warranties and arrangements of any nature, whether in writing or oral, relating to such subject matter.
- 12.5 Relationship: THE COMPANY shall not represent itself to be the agent of Enterprises and shall not pledge the credit of Enterprises nor incur any other obligations or make any promises or representations on behalf of Enterprises; nothing in this agreement shall constitute a partnership, joint venture between Enterprises and THE COMPANY.
- 12.6 Third Parties: No term of this agreement shall be enforceable under the Contracts (Rights of Third Parties) Act 1999 by a third party, but this does not affect any right or remedy of a third party which exists or is available apart from under that Act.
- 12.7 Assignment: This agreement is personal to THE COMPANY. THE COMPANY must not subcontract nor assign the benefit of any of its rights or obligations under this agreement without Enterprises' prior written consent.
- 12.8 This Agreement, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with, English law, and the parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales.

The parties each agree to the terms of this Agreement (which expression includes any documents attached as schedules). THE COMPANY hereby acknowledges and accepts receipt of the Contractors' Guide and its terms.

.....
Signature

.....
Name
Duly authorised for and on behalf of RBG Kew Enterprises Limited

.....
Signature

.....
Name
Duly authorised for and on behalf of The Company

Schedule 1

Site Map to go in here

Schedule 2

Ticket information and pricing

Fees

Minimum Guarantee

Commission rate

Schedule 3

Performance dates and times

Schedule 4

Marketing Support from RBG Kew

Kew will provide the following marketing support to the successful bidder.

- Onsite poster sites (Number, location tbc)
- Solus E shot at Launch to Marketing, commercial events and members databases and Family segment – 130K approx.
- Inclusion in July and August Marketing newsletters (what's on this month) - 80K
- Inclusion in July and August Members newsletters (what's on this month – 30K
- Inclusion in May, June, July, August Commercial Events newsletters – 46K
- Dedicated pages and listings on Kew.org – details tbc
- PR support on an ad hoc basis
- Social media posts, details tbc

Schedule 5

Balanced Scorecard

Kew the Movies Key Performance Indicators					
Evaluation Criteria	Description / Measure	Scoring Methodology	Weighting	Possible Max	Threshold score
Commercial Terms	Number of tickets sold	5 = exceeds 6,000 3 = 4,000 - 6,000 tickets sold 1 = less than 4,000	2	10	6
	Adherence to contract Approval processes where required	5 = no incidents of failure to gain or comply with Kew Approval in line with the Contract 3 = minor incidences of failure to gain or comply with Kew Approval in line with the Contract 1 = significant incident of proceeding without or in contravention of Kew Approval	2	10	6
	Receipt of Payment	5 = Payment received within 30 days 3 = Payment received within 60 days 1 = Payment received within 90 days	1	5	3
On-site behaviour	Incidents of driving on grass or speeding or discourceous driving in the Gardens	5 = no incidents 3 = one incident 1 = 2 or more incidents	1	5	3
	Incidents of unauthorised excavation of the ground including any drilling, staking or driving into the ground	5 = no incidents 3 = one incident 1 = 2 or more incidents	2	10	10
	Damage to trees shrubs, flower beds, water courses or other natural environment	5 = no damage 3 = minor damage 1 = major damage	2	10	6
	Damage to buildings, gates, walks or other built infrastructure	5 = no damage 3 = minor damage 1 = major damage	2	10	10
	Collection and removal or rubbish	5 = good housekeeping and all rubbish removed from site before 10am everyday 3 = some minor incidents of poor housekeeping or late removal of rubbish 1 = significantly poor housekeeping and/or late or non removal or rubbish	1	5	3
Health & Safety	RIDDOR reportable accidents or near misses	5 = no RIDDOR reportable accidents or near misses 3 = one RIDDOR reportable accident or near miss 1 = 2 or more RIDDOR reportable accidents or near misses	2	10	10
	Any accidents and near misses reported to the appointed Kew representative immediately	5 = accidents and near misses reported immediately 3 = accidents and near misses reported within 10 minutes 1 = accidents and near misses reported later than 10 minutes	1	5	3
	Complaints raised by any authorities with responsibility for public safety, licensing, advertising standards or similar	5 = no complaints received 3 = 1 complaint received 1 = more than 1 complaints received	2	10	6
Customer Satisfaction	Complaints from member of the public attending the shows about any aspect of the shows or booking processes	5 = fewer than 5 complaints received 3 = between 5-10 complaints received 1 = more than 10 complaints received	1	5	3
	Complaints from other visitors to the gardens or from local residents about any aspect of the shows .	5 = fewer than 3 complaints received 3 = between 3-5 complaints received 1 = more than 5 complaints received	1	5	3
Total				100	72