

## **Schedule - Conditions of Hire**

The Guildhall Trust

### **CONDITIONS OF HIRE**

Acknowledged and agreed by the Hirer

Signed:

Print Name of signatory:

Name of Hirer:

Date:

The Hirer must retain a signed original of this document and return the other signed original to Portsmouth Guildhall

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## 1. Definitions and Interpretation

### 1.1. In this Agreement, the following words and phrases shall bear the following meanings:

**Access Times** means the times of each day during the Hire Period the Hirer is entitled to access the Permitted Areas;

**Additional Services** means those services which from time to time the Hirer requests The Guildhall Trust to provide (including any services such as surtitles or signing provided as a result of the Disability Discrimination Act 1995) and which The Guildhall Trust agrees to provide; the costs of which shall be deemed an Event Cost unless otherwise specified;

**Additional Staff** means those staff which from time to time the Hirer requests The Guildhall Trust to provide and which The Guildhall Trust agrees to provide, the costs of which shall be deemed an Event Cost;

**Additional Terms** means the terms as agreed between the Hirer and The Guildhall Trust which may be specific to any Venue and/or Event and which are incorporated into the Commercial Terms;

**Agreement** means the Commercial Terms, these Conditions of Hire and all of the Schedules thereto;

**Artistes** means those performers listed in the Commercial Terms (if any);

**Associate** means in respect of any company, another company which is a subsidiary of, or a holding company of, or another subsidiary of a holding company of, such company or which is an associate of such company, within the meaning of section 435 of the Insolvency Act 1986 and subsidiary and holding company shall have the meanings given by section 736 of the Companies Act 1985;

**Booking Fee** means any fee charged in respect of any sale, service and handling of Tickets by either party, any agent and/or sub-contractor of either party (such as Ticketmaster) in consideration for their services as Ticket sales agent;

**Box Office Split** means the percentage of the face value of each Ticket sold or deemed sold for each performance of the Event, charged by The Guildhall Trust to the Hirer;

**Brochure** means any programme or brochure produced by the Hirer or any authorised merchandiser in respect of the Event for sale to the public but excluding any In-house Programme;

**Brochure Commission** means the commission set out in the Commercial Terms being a commission on the face value of each Brochure sold or deemed sold for each performance of the Event, charged by The Guildhall Trust to the Hirer;

**Business Day** means a day on which banks in the City of London are open for over the counter banking business other than a Saturday, Sunday or public holiday;

**Commercial Terms** means the terms as agreed between the Hirer and The Guildhall Trust attached hereto;

**Confidential Information** means the negotiations concerning this Agreement, this Agreement, the other party's business, future plans or financial or other affairs or such other information which is by its very nature confidential;

**Contingency** means a sum which may be retained by The Guildhall Trust prior to or at Settlement as a contingency against any future costs related to the Event which may be incurred by The Guildhall Trust.

**Curfew** means the end of a performance of the Event which is 12 midnight unless otherwise specified;

**Dark Day** means a day where there is no performance of the Event and no Get-In or Get-Out taking place;

**Deposit** means any non-refundable and non-transferable deposit payable in advance by the Hirer the amount of which is as set out in the Commercial Terms;

**Event** means the event as set out in the Commercial Terms to be presented by the Hirer at the Venue;

**Event Costs** means all costs incurred and/or due to be incurred by The Guildhall Trust in providing the Additional Services, the Additional Staff and/or any insurance pursuant to Condition 21.2 and payable by the Hirer in accordance with Condition 5.2.3;

**Excluded Areas** means those areas of the Venue which the Hirer is not entitled to hire and/or access which means all areas of the Venue other than the Permitted Areas;

**Excluded Services** means those services which The Guildhall Trust is not providing to the Hirer and which the Hirer is providing or procuring the provision of itself;

**Force Majeure** means any act of God, artist's illness, war, fire, flood, epidemic, act or threat of terrorism, national mourning, royal mourning, strike, explosion, failure of public utilities, lack of power, a suspension of power leading to inoperability of the Venue, civil commotion, riot, act of local or national government, or other circumstance beyond a party's reasonable control except for the default of any party's suppliers or sub-contractors;

**Get-In** means the unloading from vehicles and installing in the Venue any property and/or equipment prior to the Hirer's first performance of the Event on the date and during the times set out in the Commercial Terms;

**Get-Out** means the dismantling and removal from the Venue and the loading onto vehicles any property and/or equipment after the Hirer's last performance on the date and during the time set out in the Commercial Terms;

**Gross Box Office Receipts** means the aggregate receipts received by and from all sources whatsoever from the sale of Tickets excluding any Booking Fee and any credit card or other surcharges;

**Hire Period** means the dates and times set out in the Commercial Terms (excluding any Dark Day) during which time the Hirer shall be entitled to access the Permitted Areas for the purposes as set out in this Agreement, and which shall immediately end upon the termination or expiry of this Agreement;

**Hirer's Personnel** means any and all of the staff, guests, sub-contractors, artists, performers and other third parties engaged by or on behalf of the Hirer;

**Included Services** means those services, if any, provided by The Guildhall Trust to the Hirer as set out in the Commercial Terms, the cost of which is included within the Rental Charge;

**In-house Programme** means the booklet which may be provided at The Guildhall Trust's discretion for any Event of more than one performance taking place at the Venue;

**Intellectual Property Rights** means patents, trade marks, service marks, trade names, goodwill, registered designs, design rights, semiconductor topography rights, database rights, copyrights and other forms of intellectual or industrial property rights (in each case in any part of the world, whether or not registered or registrable for their full period of registration with all extensions, renewals and revivals, and including all applications for registration or otherwise), inventions, formulae, confidential information (including know-how or secret processes), rights in computer software and any similar or equivalent rights and assets which may now or in the future subsist anywhere in the world;

**Merchandise** means any goods relating to the Event/Artistes or any other goods that the Hirer or authorised merchandiser may wish to sell to the public;

**Merchandise Commission** means the commission set out in the Commercial Terms being a commission calculated with reference to the face value of each item of Merchandise sold or deemed sold and payable to The Guildhall Trust;

**Net Box Office Receipts** means the Gross Box Office Receipts less VAT;

**Permitted Areas** means those areas of the Venue that the Hirer is entitled to access (in accordance with the terms of this Agreement) as set out in the Commercial Terms;

**PRS** means the Performing Rights Society Limited;

**PPL** means the Phonographic Performance Limited;

**Refund Costs** means as set out in Condition 6.5;

**Rental Charge** means the total fees payable by the Hirer to The Guildhall Trust as set out in the Commercial Terms for the hire of the Venue which may consist of a flat fee and/or the Box Office Split (if applicable) or any other sums and is payable in accordance with these Conditions of Hire;

**Settlement** means the process of accounting between The Guildhall Trust and the Hirer;

**Staff Included** means those staff, if any, provided by The Guildhall Trust to the Hirer as set out in the Commercial Terms, the cost of which is included within the Rental Charge;

**Staff Re-Charge Rates** means those rates charged by The Guildhall Trust to the Hirer for the Additional Staff to be paid by the Hirer, which shall include the cost of making the staff available plus any national insurance and holiday pay as set out in the Commercial Terms;

**Ticket** means a ticket admitting the holder thereof to a performance of the Event at the Venue;

**VAT** means Value Added Tax; and

**Venue** means the venue set out in the Commercial Terms.

- 1.2. The list of contents and headings are for ease of reference only and shall not be taken into account in construing this Agreement.
- 1.3. References to **include** and **including** shall be construed as being by way of illustration or emphasis only and shall not be construed as, nor shall they take effect as, limiting the generality of any foregoing words.
- 1.4. References to any recital, Condition, Clause, Paragraph or Schedule are to those contained in this Agreement and all Schedules to this Agreement are an integral part of this Agreement.
- 1.5. References in this Agreement to statutes shall include any statute, bye-law, regulation or delegated legislation modifying, re-enacting extending or made pursuant to the same or which is modified, re-enacted or extended by the same.
- 1.6. A reference to any gender includes the other and words in the singular include the plural and vice versa.
- 1.7. References to a person shall be construed so as to include that person's assigns, transferees or successors in title and shall be construed as including references to an individual, firm, partnership, joint venture, company corporation, body corporate, unincorporated body of persons or any state or agency thereof.
- 1.8. Words denoting an obligation on the Hirer to do any act matter or thing include an obligation to procure that it be done (including by the Hirer's Personnel) and words placing the Hirer under an obligation or a restriction include an obligation not to permit or allow infringement of the obligation or restriction (including by the Hirer's Personnel).
- 1.9. Where the Hirer is more than one person then all of the obligations and liabilities of those persons to The Guildhall Trust hereunder shall be joint and several.
- 1.10. Where there is any conflict between the Commercial Terms and these Conditions of Hire, the Commercial Terms shall prevail.

## **2. Application of Terms**

- 2.1. The earlier of the Hirer authorising the sale of Tickets or the signature and return of the Commercial Terms by the Hirer shall constitute the acceptance of a licence agreement for the hire of the Venue which shall be governed by this Agreement.
- 2.2. If there is any conflict or inconsistency between any of the terms of this Agreement this shall be resolved according to the following numbered order of priority: (1) the Commercial Terms, (2) the Conditions of Hire.

## **3. Term**

This Agreement shall commence upon the acceptance of the Commercial Terms in accordance with Condition 2 above and, subject to earlier termination, shall continue until 30 (thirty) days after Settlement at which point it shall automatically expire.

#### **4. Licence**

- 4.1. In consideration of payment of the Rental Charge and compliance by the Hirer of this Agreement and subject to The Guildhall Trust obtaining all necessary licences and permissions, The Guildhall Trust grants to the Hirer the right (in common with The Guildhall Trust) to use the Permitted Areas for the Hire Period and during the Access Times solely and exclusively for the staging of the Event (and for no other purpose) subject always to this Agreement. The Hirer shall not access any part of the Venue other than the Permitted Areas and for the avoidance of doubt shall not be entitled to access to the Excluded Areas.
- 4.2. Subject to Clause 4.3, unless otherwise agreed, The Guildhall Trust shall not grant any licence to any person other than the Hirer for use of the Permitted Areas during the Hire Period.
- 4.3. During the Hire Period, the Venue (including the Permitted Areas) shall remain at all times in the possession and control of The Guildhall Trust and The Guildhall Trust and all persons authorised by The Guildhall Trust shall have the right:
  - 4.3.1. of access and egress at all times;
  - 4.3.2. to use, on an exclusive basis, the Venue for any purpose in connection with its own business including to license the Venue to any third party for use on any Dark Day;
  - 4.3.3. to execute and carry out, on an exclusive basis, any works authorised by The Guildhall Trust or any competent authority (including the local council and/or any superior landlord); and
  - 4.3.4. to sell in the Venue, on an exclusive basis, drinks, confectionary, food, merchandise (including venue specific merchandise) and to provide cloakroom accommodation, In-house Programmes, screen advertising and to let advertising space in In-house Programmes, bars and other places (including the auditorium and on the back of Tickets), to sell and provide corporate entertainment and hospitality and to exercise all front of house privileges (such as pourage and/or sponsorship rights) and all such income in respect of the same shall belong to The Guildhall Trust,provided always that where reasonably possible, the same shall not interfere with any equipment of the Hirer, any performance or rehearsal of the Event, or the enjoyment by the Hirer of the rights granted by this Agreement.
- 4.4. The Hirer acknowledges that all rights in relation to the Venue not expressly granted to the Hirer are reserved to The Guildhall Trust and may be exercised by The Guildhall Trust in any manner it deems appropriate.
- 4.5. The Hirer acknowledges that the right to grant admission to the Venue lies solely with The Guildhall Trust and unless otherwise agreed, The Guildhall Trust reserves the right of superintendence and control of all persons at the Venue including the protection and proper accommodation of the public and in order to fulfil the obligations of all relevant licences and consents.
- 4.6. This Agreement allows for performance(s) finishing no later than 24:00, unless otherwise specified. An additional cost (which The Guildhall Trust in its own discretion may apply) may be payable should the Hirer wish to stage more than one performance in any one day.

#### **5. Rental Charge and Other Payments**

- 5.1. The grant to the Hirer of the rights detailed hereunder is subject to the payment to The Guildhall Trust by the Hirer of all monies due hereunder.
- 5.2. Unless otherwise agreed, the Hirer shall pay to The Guildhall Trust:
  - 5.2.1. the Deposit upon the signature of the Commercial Terms;
  - 5.2.2. the Rental Charge on Settlement or, if earlier, by such dates as set out in the Commercial Terms; and
  - 5.2.3. all Event Costs in accordance with The Guildhall Trust's instructions from time to time. The Guildhall Trust shall be entitled to estimate the cost of providing the Additional Services and the Additional Staff ("**Estimated Costs**") and the Hirer shall pay all such Estimated Costs in accordance with the following provisions of this Condition. If The Guildhall Trust, acting reasonably, determines that following receipt of a

request from the Hirer to provide any Additional Services and/or Additional Staff, there are insufficient Gross Box Office Receipts at such time to fully cover the payment of costs for such requested Additional Services or Additional Staff, The Guildhall Trust shall inform the Hirer and the Hirer shall pay all such Estimated Costs therefor within 3 days of The Guildhall Trust's request. At the end of the Hire Period, The Guildhall Trust shall calculate the actual cost of all the Additional Services and the Additional Staff. The amount of any deficit between the actual sum calculated by The Guildhall Trust and any Estimated Costs previously paid by the Hirer shall be a debt due from the Hirer to The Guildhall Trust and any overpayment made by the Hirer to The Guildhall Trust established as a result of The Guildhall Trust's calculations shall be a debt due from The Guildhall Trust to the Hirer (as the case may be) and shall be accounted for during final Settlement. If The Guildhall Trust determines that following receipt of a request from the Hirer to provide any Additional Services and/or Additional Staff, there are sufficient Gross Box Office Receipts, The Guildhall Trust may in its discretion set-off the Estimated Costs thereof, in which case it shall inform the Hirer of such set-off and account for the same during Settlement in accordance with the procedures set out in 5.9 to 5.14 below.

- 5.3. Anytime before the commencement of the Hire Period, The Guildhall Trust shall be entitled, at its sole discretion, to demand immediate payment of a sum equal to the Rental Charge plus any Estimated Costs and the Hirer shall comply with any such demand.
- 5.4. All monies due to The Guildhall Trust hereunder shall be paid and must be received in cleared funds by the due date for payment noted herein. Time shall be of the essence in relation to the receipt by The Guildhall Trust of any payments due hereunder. The Hirer acknowledges that it is the responsibility of the Hirer to ensure that The Guildhall Trust receives all payments on time.
- 5.5. The Rental Charge shall not include the costs of arranging any police, emergency, medical cover or other such matters requested by the Hirer above and beyond the normal requirements of the licensing officers for the Venue which costs shall be payable in addition by the Hirer. If, due to the nature of the Event, The Guildhall Trust, the police and/or the licensing officers consider that additional staff, security and/or police are required, the cost of the same shall be borne by the Hirer.
- 5.6. If the Hirer wishes to extend the time set out in the Commercial Terms for Get-In and/or Get-Out, or if the Hirer requires extra Access Time for rehearsals the parties shall discuss the same in good faith and if extra time is possible (taking into consideration ensuing events to take place at the Venue), the Hirer shall pay an additional fee.
- 5.7. Without prejudice to the rights of The Guildhall Trust set out in Condition 4.3.4, in the event that the Hirer wishes food and/or beverages not to be sold in or brought into the auditorium and The Guildhall Trust agrees to this, The Guildhall Trust reserves the right to levy an additional charge which shall be included in the Settlement.
- 5.8. All monies received from the sale of Tickets (other than those Tickets referred to in Condition 6.8 or those Tickets sold as part of the Hirer's allocation of Tickets which shall be accounted for with The Guildhall Trust during Settlement) shall be collected by The Guildhall Trust on behalf of the Hirer and shall be included in the calculation of the Settlement.
- 5.9. The parties shall meet to discuss in good faith the calculation of monies due to either party hereunder. Subject to any retention properly made by The Guildhall Trust in accordance with the terms of this Agreement, The Guildhall Trust shall issue a Settlement statement to the Hirer either on the night or within 14 (fourteen) business days (based on industry norms) showing the balance of:
  - 5.9.1. all Gross Box Office Receipts (if any); and
  - 5.9.2. any other sums due to the Hirer in connection with the Event,  
**LESS:**
    - 5.9.3. the Rental Charge;
    - 5.9.4. all Event Costs; and

- 5.9.5. any other sums owed to The Guildhall Trust and any third party in relation to the Event (such as FET, PRS and/or PPL) under the terms of this Agreement
- 5.9.6. VAT on items 5.9.3 to 5.
- 5.10. The parties shall also account to each other at times to be agreed in respect of any Brochure Commission and Merchandise Commission.
- 5.11. The calculation of all monies due to either party hereunder shall be recorded in writing and any monies due to either party after the Settlement referred to in Condition 5.9 will be sent to such party within 14 days of the last performance of the Event (unless complete information is not available at the time of such last performance, in which case Settlement will be made as soon as practically possible thereafter) or at such intervals during the Hire Period as may be agreed between the parties. Such Settlement shall be accompanied by a report evidencing the basis for the amount remitted. The Guildhall Trust shall be entitled to deduct any costs agreed by the parties and costs incurred in relation to any damage to the Venue (excluding fair wear and tear and any damage caused by The Guildhall Trust or persons under The Guildhall Trust's direct control), telephone calls, missing inventory, courier fees, additional hours and/or laundry etc plus any VAT due in relation to these items.
- 5.12. The top half of the Settlement sheet will show in memorandum form the VAT owed by the Hirer to HM Revenue and Customs on the Gross Box Office Receipts and any other sums due to the Hirer in connection with the Event. The bottom half of the Settlement will form a valid VAT invoice to the Hirer in respect of the supplies made by The Guildhall Trust to the Hirer.
- 5.13. If the Hirer has a bona fide reason to dispute the amount of any Settlement it shall within 14 days of the date of such Settlement inform The Guildhall Trust in writing giving full details of its reason for disputing the Settlement.
- 5.14. All sums payable by the Hirer shall be made without deduction, set-off (whether legal or equitable) or withholding on account of tax or otherwise. All sums payable shall be in pounds sterling and are expressed exclusive of VAT which shall be payable (if applicable) by the Hirer against a valid invoice at the statutory rate at the time of invoicing.
- 5.15. If any sum payable to The Guildhall Trust shall not have been paid by its due date for payment then (without prejudice to any other claim or remedy of The Guildhall Trust) interest shall be payable on such sum at an annual rate of 4% above the base lending rate of The Co-operative Bank from time to time published, such interest to be due on the first day of each subsequent calendar month and, if not paid, to be compounded on the same day.
- 5.16. The Guildhall Trust reserves the right to deduct and retain from monies otherwise due to the Hirer an amount equal to any sum or sums due by the Hirer to The Guildhall Trust whether under this Agreement or otherwise

## **6. Tickets**

- 6.1. The Hirer acknowledges that The Guildhall Trust owns and operates the box office at the Venue by itself or its duly authorised agents and, unless otherwise specified in the Commercial Terms, has the exclusive right to issue and process all sales of Tickets in relation to the Event by any means whatsoever, including personal callers, a call centre and/or the Internet. The Guildhall Trust shall print the Tickets which may be subject at The Guildhall Trust's discretion to an additional charge as detailed in the Commercial Terms.
- 6.2. All monies received at the Venue box office or by its authorised agents shall, subject to any refunds made by The Guildhall Trust, be retained by The Guildhall Trust until Settlement. Tickets issued to the Hirer shall be deemed to have been sold unless returned to The Guildhall Trust no later than 48 hours prior to the Event.
- 6.3. The Hirer acknowledges that The Guildhall Trust and its duly authorised agents are acting as disclosed agents for VAT purposes with regard to the selling of Tickets. The Hirer agrees to provide The Guildhall Trust with its VAT number and to authorise The Guildhall Trust and its duly authorised agents to issue VAT receipts in its name on request. It also agrees to allow The Guildhall Trust to display its VAT number as required by law on all promotional material and Tickets.
- 6.4. The Guildhall Trust shall be entitled to charge a Booking Fee and/or credit/debit card fee on any sale of Tickets as set out in the Commercial Terms.



- 6.5. The Hirer acknowledges that The Guildhall Trust (acting reasonably and in consultation with the Hirer) shall be entitled to refund monies received from the sales of Tickets to the purchaser thereof including where the Event is cancelled and/or a performance of the Event has commenced but terminated before normal expiry of the particular performance. Where refund is as a result of an act or omission of the Hirer, the Hirer shall pay to The Guildhall Trust a sum equal to all refund payments made by The Guildhall Trust and all costs incurred by The Guildhall Trust in relation to the refunding of such tickets (collectively “**Refund Costs**”). If at the time of such refunds, sufficient monies are held by The Guildhall Trust, the Hirer hereby authorises The Guildhall Trust to deduct a sum equal to such Refund Costs (as determined by The Guildhall Trust) from such monies held by The Guildhall Trust. If at such time insufficient monies are held by The Guildhall Trust, the Hirer shall pay all Refund Costs to The Guildhall Trust within 3 days of The Guildhall Trust’s request. For the avoidance of doubt, it shall be the sole responsibility of the Hirer to provide all monies required to effect refunds when and where required by The Guildhall Trust.
- 6.6. If The Guildhall Trust has provided to the Hirer any Tickets for sale by the Hirer, the Hirer shall inform The Guildhall Trust no later than 48 hours before the Event how many of those Tickets are unsold and return such unsold Tickets to The Guildhall Trust no later than 48 hours before the Event for sale by The Guildhall Trust.
- 6.7. The Hirer shall not distribute any Tickets for the Event unless such Tickets have been provided to it by The Guildhall Trust. The Hirer will pay for all costs incurred by The Guildhall Trust in the provision of such Tickets. Such payment will be made during Settlement.
- 6.8. The Guildhall Trust shall be entitled to retain for its own use and benefit a number of “house seats” per performance of the Event as set out in the Commercial Terms, the position of which shall be decided by The Guildhall Trust. Subject to the foregoing, the number of complimentary Tickets issued for the Event shall be mutually agreed between The Guildhall Trust and the Hirer. The Guildhall Trust shall also be entitled to buy Tickets, at face value, for its own use whether for hospitality or for any other purposes.
- 6.9. Arrangements for all passes (including without limitation security, backstage and front of house passes) shall be agreed between The Guildhall Trust and the Hirer. The Guildhall Trust shall be entitled to refuse entry backstage to any guest of the Hirer.
- 6.10. All information (and any Intellectual Property Rights therein) collected by The Guildhall Trust (including any “personal data” as defined in the Data Protection Act 1998 (“DPA”)) in relation to the Event and/or any Ticket holders thereof shall belong to The Guildhall Trust and The Guildhall Trust shall be entitled to use such information in connection with its business. If The Guildhall Trust procures that any financial information (expressly excluding any customer or personal data (as defined in the DPA)) in relation to Ticket sales of the Event collected by any ticket agent of The Guildhall Trust is made available electronically to the Hirer by such ticket agent, the Hirer hereby undertakes not to use such information in any manner which is contrary to law or which would cause any loss or damage to the ticket agent or The Guildhall Trust and shall indemnify and hold harmless the ticket agent and/or The Guildhall Trust against any such loss or damage caused to the ticket agent and/or The Guildhall Trust as a result of any act or omission (whether or not negligent) in relation to such information. The Hirer acknowledges that no warranty in relation to the accuracy or otherwise of such information provided by any ticket agent is given by The Guildhall Trust.
- 6.11. Unless The Guildhall Trust specifically agrees in writing to the contrary, The Guildhall Trust reserves the exclusive right to all advertising space on Tickets for the Event, provided that The Guildhall Trust will not display any advertisements which, in the reasonable opinion of The Guildhall Trust, are considered inappropriate or unsuitable for children, or obscene, immoral or harmful to the reputation of the Hirer or which may offend against normal standards of decency.

## **7. Obligations of The Guildhall Trust**

The Guildhall Trust shall:

- 7.1. make available to the Hirer during the Hire Period the Permitted Areas for the sole purpose of staging the Event (and not for any other purpose whatsoever) on the terms set out in this Agreement and shall provide:
- 7.1.1. and pay for the Included Services and the Staff Included;

- 7.1.2. subject to the Hirer informing The Guildhall Trust no less than 30 days before the first performance of the Event of what Additional Staff and Additional Services it requires and The Guildhall Trust agreeing thereto, the Additional Staff and the Additional Services at the cost of the Hirer,

but shall not provide or pay for the Excluded Services which, if required, shall be provided and paid for by the Hirer;

- 7.2. subject to power, heating and lighting being available from the relevant supplier and from the national grid, provide and, unless otherwise agreed (as set out in the Commercial Terms), pay for such electrical power, front of house lighting, working lights and heating as may be reasonably required to ensure the proper maintenance and operation of the Venue during the Hire Period; and
- 7.3. upon request by the Hirer, provide written details of the costs of the Additional Services. Should The Guildhall Trust, acting reasonably, incur any further Event related costs, The Guildhall Trust shall use reasonable endeavours to keep the Hirer aware of such costs and shall provide details thereof upon request by the Hirer.

## **8. Obligations of the Hirer**

The Hirer shall:

- 8.1. produce at the Venue the Event in accordance with this Agreement;
- 8.2. not damage all or any part of the Venue and maintain and at the expiration of the Hire Period return the Permitted Areas and all equipment and other property therein which the Hirer has been authorised to use, in the same state of repair and condition as when taken possession of by the Hirer all to the satisfaction of The Guildhall Trust and without cost to The Guildhall Trust save for any damage caused by The Guildhall Trust or persons under The Guildhall Trust's direct control;
- 8.3. not make any additions or alterations of any nature whatsoever to any part of the Venue without the prior written consent of The Guildhall Trust. All additions and alterations to the Permitted Areas to which The Guildhall Trust has given its consent shall be removed before the end of the Hire Period (time being of the essence) and the Hirer shall reinstate such Permitted Areas and make them good at its cost to the same state of repair and condition as when it took possession thereof. Notwithstanding any consent given by The Guildhall Trust in relation to any additions and alterations, all such additions and alterations shall be the responsibility of the Hirer and the Hirer shall indemnify and keep indemnified The Guildhall Trust against all liability, costs, claims, demands or expenses of any nature both direct and indirect howsoever arising as a result of any additions and alterations carried out by the Hirer;
- 8.4. if requested by The Guildhall Trust, provide full details (which shall include all necessary certificates) of all equipment, vehicles, property, materials and other things which the Hirer intends to bring into the Permitted Areas in order to obtain the prior consent in writing of The Guildhall Trust in relation thereto. The Hirer shall use any and all such equipment, vehicles, property and materials safely. The Guildhall Trust shall be entitled to impose such conditions as it shall think fit in relation to any consent given and notwithstanding such consent the Hirer shall indemnify and keep indemnified The Guildhall Trust against all liability, costs, claims, demands or expenses both direct and indirect of any nature howsoever arising as a result of any equipment or other possessions or things of the Hirer. The Hirer shall remove any and all equipment and all other items brought into the Venue by it at the end of the Hire Period, it being agreed that if the Hirer does not remove its property by such time, The Guildhall Trust may dispose of any or all of it as it sees fit, inclusive of the right (but not the obligation) to store such property at the expense of the Hirer;
- 8.5. observe and comply with and ensure that any and all equipment observes and complies with all statutes, laws, rules and regulations, codes of good practice, directions and instructions including those made by:
- 8.5.1. The Guildhall Trust; and
- 8.5.2. the government or other governmental authority, the local authority and/or attaching to the local authority's licence granted to The Guildhall Trust for the Venue and any other enactment or bye-law or regulation made thereunder relating to the physical safety and health and the use, construction and management of the Venue,

in connection with the Venue.

- 8.6. not load nor use the floors, walls, ceilings or structure of the Permitted Areas in any manner which will cause strain, damage or interference with any part of Venue, including structural parts, load bearing framework, roof, foundations, joist, external and internal walls, nor undertake any electrical or other works in relation to the Venue (including any temporary stage, amplification or lighting facilities) without obtaining the prior written consent of The Guildhall Trust;
- 8.7. not overload the lifts, electrical installations or conducting media in the Permitted Areas;
- 8.8. not do or omit to do anything that interferes with or imposes an additional loading on any ventilation, heating, air conditioning or other plant or machinery serving the Venue;
- 8.9. not produce any noise or sound which exceeds any sound/noise levels to which the Venue is subject;
- 8.10. not obstruct any exit from any passage or gangway or other access in or serving the Venue;
- 8.11. notify The Guildhall Trust immediately upon becoming aware of any accident, injury or damage occurring in the Venue;
- 8.12. accept the Permitted Areas in their state and condition at the commencement of the Hire Period which The Guildhall Trust warrants will be clean and clear of obstruction;
- 8.13. be responsible (except in respect of fair wear and tear or where such damage is caused by The Guildhall Trust or persons under The Guildhall Trust's direct control) for all expenses incurred arising directly or indirectly from all damage caused to the Venue and/or any equipment or effects in the Venue during the Hire Period;
- 8.14. dispose of all rubbish/waste where directed by The Guildhall Trust and in the event that any rubbish/waste is not disposed of where directed, the Hirer shall pay all costs incurred by The Guildhall Trust and charges made by The Guildhall Trust in relation to disposing of such rubbish/waste correctly;
- 8.15. not do anything which places or may place The Guildhall Trust and/or any employee of The Guildhall Trust in breach of any (without limitation) entertainment, premises, personal, betting and gaming, liquor or other licence, consent or permit of any nature in relation to the Permitted Areas, the Venue or any part or parts thereof. Without prejudice to the foregoing, where the Hirer is doing anything which may place The Guildhall Trust and/or any employee of The Guildhall Trust in breach of any of the aforementioned licences, The Guildhall Trust may notify the Hirer as soon as reasonably practical of such act and allow the Hirer a period to make good;
- 8.16. subject to remaining provisions of this condition not sell or distribute any (without limitation) food, tobacco or beverage (alcoholic or otherwise) within the Venue at any time of the Hire Period. The Hirer may provide food and beverages to the production crew;
- 8.17. comply in all respects with the provisions of all relevant statutes for the time being in force (including any certificates under the Licensing Acts 1965 and 2003, the Theatre Act 1968, the Fire Precautions Act 1971, Health Act 2006 and any requirements of the Town and Country Planning and Environmental Protection legislation, Health and Safety at Work Act 1974 (and all amendments thereto and orders made thereunder including the Management of Health and Safety at Work Regulations 1999 and the Manual Handling Operations Regulations 1992) and the Disability Discrimination Act 1995) and requirements of any competent authority relating to the Permitted Areas and/or the Venue;
- 8.18. (if applicable) at all times, promptly upon request of The Guildhall Trust, comply with the recommendations, and observe and abide by the terms of all agreements made with trade unions and other organisations and persons and all other union agreements binding on or regularly adhered to by The Guildhall Trust and ensure that arrangements for the Event (including any arrangements with performers) do not infringe agreements with trade unions and/or trade associations including the Musicians Union, Equity or BECTU;
- 8.19. ensure that all performances of the Event take place strictly within the hours agreed, only undertake sound checks and rehearsals for the Event at times agreed to by The Guildhall Trust and under no circumstances allow any sound checks, rehearsals and/or performances to take place after the Curfew;

- 8.20. not take longer than permitted for Get-In and/or Get Out so as to impact on the Event or on any events subsequent to the Hire Period;
- 8.21. without cost to The Guildhall Trust, entirely provide for the public presentation of the Event at the Venue, including all costs of Get-In and Get-Out and all costs of handling and erecting and dismantling sound and lighting equipment unless otherwise agreed in the Commercial Terms;
- 8.22. if the Hirer is threatened with any prosecution and/or legal proceedings relating directly or indirectly to the Event or to the use of the Venue, immediately inform The Guildhall Trust and supply The Guildhall Trust with copies of all documents and letters received in relation thereto;
- 8.23. not do, nor allow to be done, anything which is or may tend to be a nuisance, disturbance or annoyance or which is injurious in any way to The Guildhall Trust or to adjacent or adjoining occupiers to the Venue or to the neighbourhood, nor do or allow to be done any act or any failure to act which may cause any licence applicable to the operation of the Venue or any part thereof to be withdrawn, annulled, suspended, endangered, modified in any way, not renewed or renewed with conditions more adverse to the Venue or The Guildhall Trust than now apply, nor make any application to any competent authority for any variation of any rules or regulations in force for the Venue, nor do nor allow to be done, any act or failure to act which may be a violation of any lease or superior lease of the Venue by The Guildhall Trust or its superior landlords;
- 8.24. not present nor authorise or permit any production of the Event (or any version or adaptation in any form whatever) or any part thereof or any principal artist or performer engaged in the Event to appear at any other place within a 50 mile radius of the Venue within 12 weeks prior to the commencement of the Hire Period or for 12 weeks after the termination of the Agreement unless otherwise agreed;
- 8.25. not use The Guildhall Trust's name or logo except as permitted in the Agreement and when using the same, not bring The Guildhall Trust into disrepute, nor hold itself out as having the authority to act or incur debts or obligations on The Guildhall Trust's behalf;
- 8.26. do nothing to bring any Intellectual Property Rights owned by The Guildhall Trust or any licence which The Guildhall Trust has relating to the use of any Intellectual Property Rights from any person into risk;
- 8.27. allow free access to the Venue to officials of the relevant local council, police and fire officers, (on production of identification and in the exercise of their public duties only) whether in uniform or not, at all times during the Hire Period; and
- 8.28. where third party producer(s) have already hired the Venue or the Event takes place on a Dark Day of any third party's production or where there are other events taking place at the Venue on that day (unless otherwise agreed between The Guildhall Trust and the Hirer) be responsible for any costs associated with staging the Event on such Dark Day or on a day where there is an additional events taking place, including any additional expenses payable to any third party producers occupying the Venue, such additional expenses to be agreed between the Hirer and the third party producer(s) and settled between them directly.

## **9. Staff**

- 9.1. The Guildhall Trust shall provide all Staff Included at its own cost.
- 9.2. The Guildhall Trust shall inform the Hirer of the levels of and different types of staff the Hirer must provide at the Hirer's cost in the Permitted Areas at different times during the Hire Period ("**Required Staff Levels**") and the Hirer shall fully comply with the Required Staff Levels. If The Guildhall Trust, acting reasonably, considers that the Hirer has not engaged sufficient staff to comply with the Required Staff Levels, The Guildhall Trust may engage enough additional staff to ensure such compliance and all costs therefore will be deemed Event Costs and will be paid for by the Hirer in accordance with Condition 5.
- 9.3. If the Hirer wishes The Guildhall Trust to provide any Additional Staff and/or Additional Services, it must inform The Guildhall Trust thereof no later than 30 days before the Hire Period. The Guildhall Trust will inform the Hirer as soon as is reasonably possible thereafter if it will provide all or part of such request. If The Guildhall Trust provides Additional Staff and/or Additional Services, all costs therefore will be deemed Event Costs and will be paid for by the Hirer in accordance with Condition 5.

- 9.4. The Hirer shall remain fully liable for all acts and omissions of any third party engaged by it (including the Hirer's Personnel). The Hirer shall comply with such directions as The Guildhall Trust shall give from time to time and shall ensure that the Hirer's Personnel so comply when such Hirer's Personnel are in the Venue.
- 9.5. The Hirer shall instruct and ensure that all the Hirer's Personnel behave in an orderly way and in accordance with The Guildhall Trust's general policies and that they comply with the reasonable directions of The Guildhall Trust.
- 9.6. The Hirer shall be solely responsible for the salaries, wages, taxes, national insurance contributions and any other statutory payments relating to all the Hirer's Personnel and including any UK resident and non-UK resident performers, sub-contractors or agents for work done or services rendered in connection with the Event.

## 10. The Event

### 10.1. The Hirer:

- 10.1.1. undertakes that the Events shall take place as advertised;
  - 10.1.2. undertakes that it shall not engage for the Event any performer generally known to act so as to incite or provoke the audience to act in an aggressive, destructive or unlawful manner;
  - 10.1.3. undertakes that if any of the participants in the Event is under 16 years of age, it shall comply with all statutory requirements in respect of the participation of children in the Event;
  - 10.1.4. undertakes that prior to the first performance date, it shall secure all licences, consents, rights, waivers and/or other approvals necessary for the Event;
  - 10.1.5. warrants that the promotion and staging of the Event does not and undertakes to procure that it shall not infringe or violate any law, the Intellectual Property Rights or other rights of any third party or contain anything which might reasonably be considered to be obscene, scandalous, indecent, libellous or defamatory, or might reasonably be considered to be likely to cause public disorder, be unlawful or be damaging to the reputation of The Guildhall Trust or the Venue;
  - 10.1.6. warrants that the Hirer is the person presenting or directing the Event within the meaning of the Theatre Act 1968;
  - 10.1.7. warrants that it is not aware of any legal proceedings or any threat of such proceedings or any claim by any third party alleging that the Event infringes any rights (whether Intellectual Property Rights or otherwise) of any third party.
- 10.2. In the event of any breach by the Hirer of any of Condition 10.1 or if The Guildhall Trust is threatened with legal proceedings in respect of the Event or if the relevant licensing authority objects to all or part of the Event, The Guildhall Trust may without prejudice to all other remedies immediately, in its sole discretion refund any Tickets to purchasers of such Tickets, suspend the performance of the Event and/or terminate the Agreement with immediate effect without further notice to the Hirer whereupon Condition 23 shall apply.

## 11. Foreign Entertainers Tax

### 11.1. In this Condition:

- 11.1.1. **FET Notification** means a notification provided to The Guildhall Trust by the UK tax authorities following an application by the Hirer, which gives The Guildhall Trust authority to deduct a reduced rate (or nil amount) of tax due under the FET Regime from payments to the Hirer hereunder;
- 11.1.2. **FET Regime** means the rules requiring deduction of tax from payments by UK persons to non-UK resident entertainers set out in s.555 Income and Corporation Taxes Act 1988 and the Income Tax (Entertainers and Sportsmen) Regulations 1987, or any successor provisions subsequently enacted;
- 11.1.3. **After Tax Basis** means such amount as will so far as possible restore the indemnified party's position (in terms of both cash and available reliefs from tax) to what it would have been in the absence of the Event giving rise to the indemnity claim, taking into

account both the extent (if any) to which the receipt of the payment by the indemnified party is subject to tax in its hands and the extent (if any) to which the event giving rise to the indemnity claim also caused any relief from tax to accrue to the indemnified party which would not otherwise have accrued; and

- 11.1.4. **Middleman Agreement** means the hirer has entered into an agreement with the Inland Revenue to be part of a membership scheme which entitles the Hirer to receive the gross payment inclusive of any Foreign Entertainers Tax due, and that the Hirer is responsible for making such payments directly to the Inland Revenue. The Hirer will hold a Membership Certificate a copy of which will be submitted to The Guildhall Trust.
- 11.2. In the event that The Guildhall Trust receives a FET Notification in respect of payments to the Hirer from the Inland Revenue prior to the making of any payment hereunder, The Guildhall Trust shall deduct from all payments to the Hirer pursuant to this Agreement such amount of tax as is specified in the FET Notification.
- 11.3. In the event that no FET Notification nor a copy of the Middleman Agreement certificate has been received in respect of payments to the Hirer as at the date on which any such payment is due, then:
  - 11.3.1. the Hirer shall notify The Guildhall Trust in writing of any non-UK tax resident performers taking part in the Event (or alternatively that there are no such performers), and The Guildhall Trust shall make such deductions in respect of tax from payments to the Hirer hereunder as are required by law having regard to the tax residence of the performers; or
  - 11.3.2. if the Hirer shall not have provided any notification in accordance with Condition 11.3.1 then The Guildhall Trust shall make such deductions in respect of tax from payments to the Hirer hereunder as in its reasonable discretion it considers appropriate due to any uncertainty over the residence of any of the performers.
- 11.4. The Hirer shall indemnify The Guildhall Trust on an after tax basis against any liability (including liabilities to account for tax, interest and penalties on unpaid tax and reasonable costs incurred (including management time)) arising from claims made by the Inland Revenue or any other tax authority in respect of non-compliance with the FET Regime which claims result from The Guildhall Trust acting in reliance on incorrect information provided to it or the UK tax authorities by the Hirer, or following the non-provision of material information to it or the UK tax authorities, by the Hirer.

## **12. Health and Safety**

### **12.1. The Hirer undertakes that it:**

- 12.1.1. shall provide The Guildhall Trust with all risk assessments, method statements and all other health and safety documents (including certificates and reports) in relation to the Event no later than 30 (thirty) days before the Event;
- 12.1.2. shall not at any time in the Venue (including the dressing rooms or stage area) smoke, bring into the Venue and/or use any naked lights, interfere or tamper with any lighting apparatus or bring into the Venue and/or use any dangerous, noxious, combustible or explosive materials without the prior written consent of The Guildhall Trust;
- 12.1.3. that all non-smoking legislation, laws, rules, regulations and guidelines are fully complied with by it, the Hirer's Personnel and all other individuals and third parties in all backstage areas and dressing rooms within the Venue and where the same are not complied with, indemnify The Guildhall Trust in respect of any costs and expenses (including any fines and penalties) sustained by The Guildhall Trust;
- 12.1.4. that in the event the Hirer or the Hirer's Personnel bring any dangerous, noxious, combustible, flammable or explosive material into the Venue, The Guildhall Trust may at its sole option:
  - (a) require the removal of such material by the Hirer;
  - (b) require the Hirer to render such material safe, non-flammable or non explosive; or
  - (c) at the expense and risk of the Hirer render such material safe, non-flammable or non-explosive;

- 12.2. In the event of material breach or material non-compliance by the Hirer of the provisions of this Condition 12, The Guildhall Trust may without prejudice to all other remedies immediately refund any Tickets to purchasers of such Tickets, suspend the performance of the Event and/or terminate the Agreement with immediate effect without notice to the Hirer whereupon Condition 23 shall apply.

### **13. Pyrotechnics and Lasers**

- 13.1. Without prejudice to the provisions of Condition 12, if the Hirer wishes to use any lasers and or/explosive material such as pyrotechnics (collectively “**Explosive Materials**”) in the Event, the Hirer shall send to The Guildhall Trust all relevant information and anything else required by The Guildhall Trust no less than 30 days prior to the first performance of the Event.
- 13.2. The Hirer shall not be entitled to use any Explosive Materials, without obtaining the prior written consent of The Guildhall Trust and the local authority.
- 13.3. If The Guildhall Trust and/or the local authority chooses to appoint any independent specialist to inspect the Explosive Materials, all charges therefore will be paid for by the Hirer within 7 days of The Guildhall Trust’s request therefore.

### **14. Television, Film, Sound Recording and Collection Societies**

- 14.1. During the Hire Period, the Hirer shall not itself nor authorise nor permit others (without the prior written consent of The Guildhall Trust) to photograph, record, televise, broadcast or distribute the Event (or any part thereof including rehearsals) by any media whatsoever (including television, radio or internet) nor bring into the Venue any recording equipment, television or film cameras without the prior written consent of The Guildhall Trust which may be provided in consideration of a fee (such fee to be agreed in advance between The Guildhall Trust and the Hirer) and subject to the Hirer procuring that the Hirer and/or relevant third party carrying out any such activity enters into The Guildhall Trust’s standard filming agreement.
- 14.2. The Hirer shall ensure that all copyright clearances required in respect of the Event are procured before the Event is performed at the Venue. If requested to do so by The Guildhall Trust, the Hirer shall deliver to The Guildhall Trust a complete and accurate schedule of all music played during the Event including its title, its composer(s), editor(s) and publisher and the duration for which it is played together with any further information required by a collection society or licensing body in connection with the performance of the Event.
- 14.3. Collection society charges (including PRS and/or PPL charges) will be paid by The Guildhall Trust on the Hirer’s behalf and redeemed on Settlement and will be levied by The Guildhall Trust at the maximum rate unless written evidence is provided by the Hirer, no later than two weeks prior to the first performance date of the Event, to confirm that a lower charge has been agreed between the Hirer and the PRS and/or PPL. If there are insufficient monies on Settlement, the Hirer shall indemnify The Guildhall Trust in respect of all such charges on Settlement.

### **15. Publicity Advertising and Sponsorship**

- 15.1. The Hirer shall not publish any advertising in relation to the Event at the Venue without first procuring the consent of The Guildhall Trust to the content of such advertising. The Hirer shall ensure that all advertising schedules and budgets are agreed with The Guildhall Trust.
- 15.2. Unless otherwise agreed, the Hirer shall provide and pay for all necessary printing and publicity in connection with the Event to the reasonable satisfaction of The Guildhall Trust provided that no obligation on the part of The Guildhall Trust is imposed or implied in that respect.
- 15.3. If the parties agree that The Guildhall Trust will undertake any advertising for the Event, such advertising will be deemed to be an “Additional Service” and will be arranged and paid for accordingly unless otherwise agreed.
- 15.4. The Hirer shall send to The Guildhall Trust all publicity material for the Event. All printing shall be delivered to the Venue properly dated, headed and carriage paid no later than 8 weeks prior to the first performance or 10 weeks in the event of an Event of more than 1 week, and if not so delivered, The Guildhall Trust shall have the option of terminating the Agreement whereupon Condition 23 shall apply. The Guildhall Trust shall have the right to prohibit the issue of any publicity material or advertisement which it may consider objectionable, but such objection shall be proper and reasonable.

- 15.5. The Hirer shall ensure that all printed materials, brochures, publicity material and advertising (in whichever medium) relating to the Event:
- 15.5.1. shall bear the Venue name and logo (which at the direction of The Guildhall Trust may or may not include the The Guildhall Trust name and logo) but shall not imply that The Guildhall Trust is the Hirer or producer of the Event;
  - 15.5.2. shall bear the name (incorporating logo) of any Venue sponsor (as directed by The Guildhall Trust) within the Venue title.
- 15.6. The Hirer shall:
- 15.6.1. obtain The Guildhall Trust's prior written approval in relation to all uses of The Guildhall Trust's and Venue's name and logo; and
  - 15.6.2. give prominence to such box office and credit card booking information and such website information as requested by The Guildhall Trust, in all advertising for the Event as The Guildhall Trust shall in its absolute discretion require.
- 15.7. The Hirer shall ensure that all advertisements and posters shall be exhibited only in accordance with all applicable legislation (including the Town and Country (Control of Advertisements) Regulations, 1992 and the Trade Description Act 1968).
- 15.8. The Hirer shall not flypost nor permit nor authorise others to do so on its behalf in connection with its hire of the Venue. Failure to observe the above shall, without prejudice to any other rights or remedies available to The Guildhall Trust, entitle The Guildhall Trust to remove such posters and the Hirer shall pay The Guildhall Trust a charge of £50 plus VAT per poster removed by The Guildhall Trust in addition to the Rental Charge which the Hirer agrees shall be a genuine pre-estimation of loss in respect of costs incurred by The Guildhall Trust in organising the removal of the posters and in addition thereto shall indemnify The Guildhall Trust in relation to any fines, costs (including legal costs) and/or damages sustained by The Guildhall Trust in relation to such flyposting.
- 15.9. The Hirer shall discuss all sponsorship in relation to the Event with The Guildhall Trust prior to the Event. The Hirer acknowledges that unless otherwise agreed with The Guildhall Trust no permanent signage exhibited at the Venue will be removed for the Event.

## **16. In-House Programme**

- 16.1. If The Guildhall Trust exercises its right pursuant to Condition 4.3.4 to produce the In-house Programme, the Hirer shall supply The Guildhall Trust (at the relevant Venue no later than six weeks before the date of opening or as otherwise agreed with Venue manager) with all relevant material, including biographies and photographs of the cast and creative team, production images and background information as deemed necessary by The Guildhall Trust. The Guildhall Trust shall have full editorial control in regards to the content and design of the In-house Programme but will give due consideration to any specific objections placed by the Hirer provided that they are submitted in writing, in advance of the In-house Programme being produced and that such objections are proper and reasonable.
- 16.2. The Hirer acknowledges that in the event that In-house Programmes require cast slips, indisposition slips or similar to be inserted due to billing changes all associated costs will be charged to and paid by the Hirer.
- 16.3. The Hirer acknowledges that In-house Programmes may have a standard cover on which the name of the Production will be overprinted.
- 16.4. The Hirer acknowledges that any lost revenue due to The Guildhall Trust in respect of In-house Programmes given free at the request of the Hirer will be charged to and paid by the Hirer accordingly.

## **17. Merchandising and Brochures**

All Merchandise and/or Brochures shall be sold by The Guildhall Trust and The Guildhall Trust shall be entitled to the Merchandise Commission and/or Brochure Commission (as applicable) in respect thereof and where additional staff are required, charge the Hirer, the cost of such staff, which cost shall be deemed an Event Cost. The Guildhall Trust may in certain specific circumstances, at its sole discretion, permit the Hirer (or any third party merchandiser appointed by the Hirer, subject to The Guildhall Trust's prior written approval) to sell



Merchandise and/or Brochures, in which case a Merchandise and/or Brochure Commission or a flat fee (in lieu of the Merchandise and/or Brochure Commission) may be charged. The Hirer shall inform all concerned parties including any appointed merchandising/brochure company accordingly. The Hirer shall ensure that all Merchandise complies with any and all laws and shall have procured insurance in relation thereto in accordance with Condition 21.

## **18. Warranties**

Both parties represent and warrant to the other that as at the date of this Agreement (1) it is a corporation, duly organised, validly existing and in good standing under the laws of the jurisdiction of its incorporation; (2) it has full corporate power to execute and perform this Agreement; (3) the execution of this Agreement and the consummation of the transactions hereby contemplated will not conflict with or result in the breach of or constitute a default under any agreement or instrument to which it is a party or by which it is bound and is not in violation of any law, rule, regulation; (4) it has taken all necessary action corporate or otherwise, to authorise the execution, delivery and performance by it of this Agreement; and (5) this Agreement constitutes the legal valid and binding obligations of it, enforceable in accordance with its terms.

## **19. Indemnity**

19.1. The Hirer shall indemnify and keep The Guildhall Trust fully indemnified from and against all actions, claims, demands, costs, expenses, liabilities, loss, damages or other monetary relief (including economic or consequential loss) ("Losses") brought, made or awarded against or incurred by The Guildhall Trust resulting (directly or indirectly):

- 19.1.1. from any breach or non-performance of all or any of the provisions or warranties contained in this Agreement on the part of the Hirer;
- 19.1.2. out of any act or omission, wilful default or breach of statutory duty on the part of the Hirer or the Hirer's Personnel;
- 19.1.3. from any claim that the Event infringes the Intellectual Property Rights of any third party;
- 19.1.4. from any claim by the Hirer's Personnel for the payment for work done or services rendered;
- 19.1.5. from any infringement by the Hirer or the Hirer's Personnel of the non-smoking legislation in relation to the Venue including any fine; and/or
- 19.1.6. from any injury or death to persons in or about the Venue, damage to the Venue, the contents thereof or property or equipment of The Guildhall Trust, the property or equipment of any third party hirers currently resident in the Venue or the owner of the Venue arising out of or in connection with the exercise by the Hirer of its rights, including the staging of the Event and/or the performance by the Hirer of its obligations under this Agreement and/or the Hirer's occupancy of the Venue but excluding in respect of any damage, injury or death caused by The Guildhall Trust or persons under The Guildhall Trust's direct control.

19.2. The indemnity in this Condition 19.1 shall constitute a separate and independent obligation from the other obligations contained in this Agreement, shall give rise to a separate and independent cause of action and shall apply irrespective of any grant of time, indulgence, waiver or concession granted from time to time.

## **20. Limitation of Liability**

20.1. Neither party excludes or limits its liability under this Agreement for death or personal injury caused by its negligence, fraudulent misrepresentation or any other liability which cannot by law be excluded or limited.

20.2. Subject to Condition 20.1, The Guildhall Trust shall not be liable in any circumstance to the Hirer for any loss of profits, business, revenue, anticipated profits, goodwill or reputation, economic loss or special or indirect or consequential loss suffered by the Hirer or any third party in relation to the Event, including by reason of any breach by The Guildhall Trust of the terms of this Agreement or by reason of any negligent act or omission of The Guildhall Trust.

- 20.3. Notwithstanding Condition 20.2, The Guildhall Trust shall not in any event be liable to return moneys received or pay damages or other compensation to the Hirer for whatever reason such damages or other compensation may be due in excess of the Rental Charge.

## **21. Insurance**

- 21.1. The Hirer shall effect, and during the Hire Period shall maintain, insurance with a reputable insurer or insurers for the following:
- 21.1.1. normal and proper public liability and products insurance applicable at a level sufficient to cover its risks but in any event no less than £5 million any one claim and no limit in the aggregate in the period of insurance; and
  - 21.1.2. normal and proper employer's liability insurance at a level no less than £10 million per single claim and no limit in the aggregate in the period of insurance.
- 21.2. The Hirer shall supply copies of the insurance policy together with evidence of payment of the premiums to The Guildhall Trust no later than 7 days before the Event. If the Hirer has not produced such copies and evidence by such time, The Guildhall Trust reserves the right to arrange normal and proper public liability insurance for the Event on behalf of the Hirer and the cost of so doing shall be deemed an Event Cost.

## **22. Termination**

- 22.1. This Agreement may be terminated with immediate effect by The Guildhall Trust by written notice to the Hirer given at any time after the occurrence of any of the following events:
- 22.1.1. if the Hirer has committed a breach of any of the material terms hereof and (where such breach is capable of being remedied) the Hirer has failed to remedy such breach within 7 (seven) days (or such shorter time as The Guildhall Trust considers necessary given the circumstances taking into account the nature of the breach and its effect on the Event and/or the operation of this Agreement) of receiving a notice specifying the breach and requiring its remedy;
  - 22.1.2. breach of Condition 10.1 in accordance with Condition 10.2;
  - 22.1.3. breach of Condition 12.1 in accordance with Condition 12.2;
  - 22.1.4. breach of Condition 15.4 in accordance with Condition 15.4;
  - 22.1.5. the Hirer is deemed by any competent authority unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986; or becomes unable to pay its debts as they fall due; or suspends or threatens to suspend making payments with respect to all or any class of its debts; or becomes bankrupt; or convenes a meeting of its creditors; or proposes or makes any arrangement or composition with or assignment or moratorium for the benefit of its creditors generally or any class of creditors; or negotiations are commenced with a view to the general re-adjustment or re-scheduling of all or any part of its liabilities; or a resolution is passed or any step taken with a view to the Hirer being adjudicated or found insolvent; or the winding up or dissolution of the Hirer; or the Hirer obtains a moratorium or other protection from its creditors; or a trustee, supervisor, administrative or other receiver, administrator, liquidator or similar officer is appointed in respect of the Hirer or any part of its assets; or the Hirer suffers any event analogous to any of the above in any jurisdiction;
  - 22.1.6. the Hirer ceases to carry on business;
  - 22.1.7. any change in the Event which would, in the reasonable opinion of The Guildhall Trust result in a material reduction of the Gross Box Office Receipts; and
  - 22.1.8. there is any change in the ownership or control of the Hirer,
- whereupon the provisions of Condition 23 shall apply.
- 22.2. This Agreement may be terminated with immediate effect by The Guildhall Trust:
- 22.2.1. by written notice to the Hirer at anytime if the applicable licensing authority refuses, otherwise than by reason of the Hirer's act, omission or default, to issue a licence so that the Event must be cancelled or postponed; and/or

22.2.2. in the event of the Venue being required due to unforeseen circumstances outside of The Guildhall Trust's control,

whereupon The Guildhall Trust shall refund all sums paid to it at such date by the Hirer and neither The Guildhall Trust nor the Hirer shall be liable to the other for any expenses or losses directly or consequently incurred by them under this Agreement as a result of termination

under this Condition 22.2 and this Agreement shall become null and void ceasing to take effect and in any such cases neither party shall have any claim whatsoever against the other in respect of this Agreement or any other matter arising out of this Agreement.

22.3. This Agreement may be terminated by The Guildhall Trust due to the occurrence of a Force Majeure event in accordance with Condition 25.3.

### **23. Cancellation or Postponement of the Event**

23.1. If the Event is cancelled or postponed:

23.1.1. by the Hirer;

23.1.2. as a direct or indirect result of any act, omission or default of the Hirer and/or any of the Hirer's Personnel including as a result of Condition 22.1;

23.1.3. as a result of the refusal by the licensing authority to issue or the issue and subsequent revocation of a licence as a result of the Hirer being unwilling or failing to provide the information or the undertakings required by the licensing authority,

23.1.4. a Force Majeure event; and/or

23.1.5. for any other reason (but not where the Event is cancelled or postponed by The Guildhall Trust in accordance with Conditions 22.2 ),

then, without prejudice to any other rights or remedies of The Guildhall Trust, The Guildhall Trust shall be entitled to retain the Deposit and to receive payment by the Hirer to The Guildhall Trust of the total of:

- (a) the Rental Charge and where this consists of a Box Office Split, the amount of the Box Office split due shall be whichever is the greater of (i) the Box Office Split based on the number of Tickets actually sold at the date of cancellation; and (ii) £2 (two pounds sterling) per Ticket on the capacity available for sale for the Event;
- (b) all Refund Costs;
- (c) all Event Costs; and
- (d) all costs incurred by or due to be incurred by The Guildhall Trust in relation to any marketing of the Event which The Guildhall Trust may have undertaken if requested to do so by the Hirer in writing,

and the Hirer agrees that it shall have no claim for any payment by way of damages or compensation arising out of or in respect of termination and further shall fully indemnify The Guildhall Trust in accordance with Condition 19.1.

23.2. If The Guildhall Trust secures another booking for the hire of the Venue on a date or dates within the Hire Period, then such sums due to The Guildhall Trust by the Hirer in accordance with Condition 23.1 shall be reduced by an amount equal to:

23.2.1. the per day amount of the Rental Charge in respect of each day of the Hire Period that such other booking has replaced (such that, by way of example only, if the other booking fills only two days of the Hire Period but extends for an additional four days thereafter, only the Rental Charge in respect of such two days shall be used in this calculation and not all six days of the other booking); LESS

23.2.2. any charges payable by The Guildhall Trust to third parties in respect of such other booking,

such amount of reduction not to exceed the amounts due to The Guildhall Trust by the Hirer pursuant to Condition 23.1. The Guildhall Trust shall not be obliged to disclose to the Hirer

the hire charge or fee received by The Guildhall Trust in respect of such other booking which shall be deemed Confidential Information between The Guildhall Trust and the other hirer.

- 23.3. The Event shall be regarded as cancelled should the Event not have commenced or have commenced but not be performed in its entirety.

#### **24. Effect of Termination**

On expiry or termination of this Agreement for any reason, any and all rights granted to the Hirer shall revert immediately to The Guildhall Trust and all obligations under this Agreement shall cease with the exception that Conditions 5.4, 5.15, 5.16, 8.13, 8.24, 8.25, 8.26, 11.4, 15.8, 18, 19, 20, 23, 24, 26.10, 26.14, 26.16 and any other provision that needs to survive to give effect to its terms shall survive any termination of this Agreement. Such termination shall be without prejudice to any other rights or remedies to which a party may be entitled under this Agreement or at law as a result of or in relation to any breach or other event which gives rise to termination, and shall not affect any other accrued rights or liabilities of either party as at the date of termination.

#### **25. Force Majeure**

- 25.1. If either party is affected by a Force Majeure event which prevents it from performing its obligations under this Agreement, it shall promptly notify the other party of the nature and extent of the circumstances in question. Neither party shall be liable for any delay in performing its obligations nor for failure to perform its obligations under this Agreement if and to the extent that the delay or failure is caused by a Force Majeure event.
- 25.2. If either party is affected by a Force Majeure event, it shall use all reasonable endeavours to mitigate and/or eliminate the consequences of such Force Majeure event and inform the other party of the steps which it is taking and proposes to take to do so.
- 25.3. If either party is prevented from performing its material obligations under this Agreement by the Force Majeure event for a consecutive period of greater than 3 days or such shorter period as such party (acting reasonably) considers appropriate in the circumstances, it shall be entitled, by notice in writing to terminate this Agreement forthwith without liability to either party. Upon termination of this Agreement or cancellation of the Event due to a Force Majeure event the Hirer shall pay to The Guildhall Trust all sums in accordance with Condition 23.1.

#### **26. General**

- 26.1. This Agreement is personal to the Hirer and the Hirer shall not be entitled to assign, transfer, create any trust over, charge or otherwise encumber or deal in any manner with all or any part of this Agreement nor sub-contract any or all of its obligations under it without the prior written consent of The Guildhall Trust to be given or withheld in its absolute discretion. If such consent is provided, the Hirer shall be fully liable for all acts or omissions of such sub-contractors.
- 26.2. The Guildhall Trust may assign this Agreement in connection with a merger or amalgamation of The Guildhall Trust to any Associate of The Guildhall Trust or to the purchaser, landlord and/or new operator of the Venue provided that such purchaser, landlord and/or new operator of the Venue agrees to be bound by the obligations under the Agreement. The Guildhall Trust may subcontract all or any of its rights or obligations hereunder.
- 26.3. Nothing in this Agreement and no action taken under this Agreement shall create a partnership or establish a relationship of principal and agent or any other relationship other than independent contractors between any of the parties or otherwise authorise any party to bind any other party for any purpose.
- 26.4. This Agreement or any provision hereof may not be changed or amended without the written consent of the parties.
- 26.5. This Agreement sets out the entire agreement and understanding between the parties. It supersedes any agreements and/or understandings between the parties in relation to the subject matter of the Agreement.
- 26.6. Each party agrees and acknowledges that in entering this Agreement it does not rely on any representation not expressly set out in this Agreement of any nature made to it by any person (whether a party or not). Each party irrevocably waives all claims, rights and remedies in relation to any such representations made to it before entering into this Agreement. This Condition does not

exclude or restrict any liability or remedy for fraudulent misrepresentation or fraudulent concealment.

- 26.7. No failure or delay by any party to exercise any right, power or remedy will operate as a waiver of it nor will any partial exercise preclude any further exercise of the same, or of some other right, power or remedy. A waiver by any party of any of the terms or conditions of this Agreement in any instance shall not be deemed or construed to be a waiver of such term or condition for the future, or of any subsequent breach thereof.
- 26.8. All remedies, rights, undertakings obligations and agreements contained in this Agreement shall be cumulative and none of them shall be in limitation of any other remedy, right, undertaking, obligation or agreement of any party.
- 26.9. If any provision of this Agreement shall be held illegal or unenforceable, the enforceability of the remainder of this Agreement shall not be affected.
- 26.10. Save as provided by Condition 26.11, each party shall (and shall procure that its representative shall) keep confidential and not disclose to any person any Confidential Information.
- 26.11. A party may disclose or permit the disclosure of Confidential Information to its officers, employees, professional advisers, sub-contractors or agents to the extent necessary to enable it or them to perform or to enforce any of its rights or obligations under this Agreement; or when required to do so by law.
- 26.12. Either party may make or release statements or announcements to the press or other media regarding the signature of the Agreement and its activities hereunder PROVIDED THAT any and all such statement or announcements are made after a date specified by The Guildhall Trust and they are previously approved by the other party such approval not to be unreasonably withheld or delayed.
- 26.13. Any notice, invoice or other document which may be given by either party under this Agreement shall be deemed to have been duly given if delivered personally or sent by first class or special delivery pre-paid post to each party's registered office or any other address notified to each other in accordance with this Condition as an address to which notices, invoices and other documents may be sent. Any such communication shall be deemed to have been made to the other party on the actual time of delivery (if by personal delivery) or 3 days (Sundays and Bank Holidays excluded) from the date of posting (if by first class pre-paid letter). Any notice sent to The Guildhall Trust shall be copied to the legal department at the registered office.
- 26.14. Each party shall, and shall use all reasonable endeavours to, procure that third persons shall execute and sign such documents and do such acts and things as the other party shall reasonably request in order to carry out the intended purpose of this Agreement or perfect or enforce that other party's rights under this Agreement.
- 26.15. The parties do not intend that any term of this Agreement shall be enforceable solely by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person who is not a party to this Agreement other than any ticket agent in relation to the provisions of Condition 6.10 only. No variation to this Agreement and no supplemental or ancillary agreement to this Agreement shall create any such rights unless expressly so stated in any such agreement by the parties to this Agreement. This does not affect any right or remedy of a third party which exists or is available apart from that Act.
- 26.16. This Agreement shall be governed by and construed in accordance with English law and the parties hereby submit to the exclusive jurisdiction of the courts of England and Wales.

<p>A signed copy of this document must be retained by the Supplier and the original returned to the Venue</p>
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