

# **BH Live Standard Terms & Conditions for Events and Productions**

# STANDARD TERMS AND CONDITIONS FOR EVENTS AND PRODUCTIONS

## 1 Interpretation

- 1.1 In these terms and conditions the definitions set out in the Appendix shall apply.
- 1.2 Any terms defined in the Performance Arrangement Form shall have the same meaning in these Terms unless the context requires otherwise.
- 1.3 References to “including” or “includes” shall be deemed to have the words “without limitation” inserted after them.
- 1.4 A reference to a statute, statutory body or statutory provision is a reference to it as amended, extended or re-enacted from time to time. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted.
- 1.5 The schedules to the Contract, together with any documents referred to in them and the Performance Arrangement Form, form an integral part of the Contract and any reference to the Contract means the Contract together with any schedules and all documents referred to in them, and such amendments in writing as may subsequently be agreed by the Parties.
- 1.6 If any conflict arises between these Terms and any provision of any schedule of the Contract, or the Performance Arrangement Form these Terms shall prevail.

## 2 Basis of the Contract

- 2.1 BH Live wishes to engage the Producer/Promoter to produce the Performance on its behalf at the Venue.
- 2.2 The Performance Arrangement Form constitutes an offer by the Producer/Promoter to produce the Performance in accordance with these Terms.
- 2.3 The offer shall only be deemed to be accepted when BH Live signs the Performance Arrangement Form at which point and on which date the Contract shall come into existence (Effective Date).
- 2.4 The Contract constitutes the entire agreement between the Parties. The Producer/Promoter acknowledges that it has not relied on any statement, promise, representation, assurance or warranty made or given by or on behalf of BH Live which is not set out in the Contract.
- 2.5 The Contract once entered into can only be varied in accordance with the provisions of clause 34.
- 2.6 These Terms apply to the Contract to the exclusion of any other terms that the Producer/Promoter seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 2.7 Any quotation given by BH Live shall not constitute an offer, and is only valid for the period specified.
- 2.8 The Performance Period is inclusive of the setting-up, cleaning and clearing of any equipment or facility in relation to the production at the Venue.

## 3 Producer/Promoter’s obligations

- 3.1 The Producer/Promoter shall deliver to BH Live, at its own expense, the Performance set out on the Performance Arrangement Form and deliver the performances of the Performance in the Performance Area of the Venue during the Performance Period, in a first class and professional manner.
- 3.2 Unless otherwise specified on the Performance Arrangement Form, the Producer/Promoter's responsibilities shall include:
- 3.2.1 Providing a full and efficient company capable of presenting the Performance with reasonable provision for understudies;
  - 3.2.2 Providing all props, costumes, scenery, furniture, band parts and instruments and effects necessary and incidental to the provision of the Performance and storage for the same at its own expense (unless BH Live agrees to provide storage space in the Venue);
  - 3.2.3 Providing on demand a copy of the actual script to be performed, together with scene and lighting plots;
  - 3.2.4 carrying out all necessary set up and installation work for the Performance in accordance with all

applicable requirements in these Terms; and

3.2.5 ensuring that BH Live's Equipment and the Producer/Promoter's Equipment is sufficient for the requirements of the Performance.

3.3 The Producer/Promoter shall:

3.3.1 comply with any directions given by BH Live's staff and in particular in relation to emergency call outs;

3.3.2 not obstruct passages, gangways, corridors, staircases, exits and emergency doors of the Performance Area;

3.3.3 not use the Performance Area in such a manner so as to cause nuisance, annoyance or inconvenience to BH Live and/or users of the Venue;

3.3.4 not interfere with, damage or misuse any equipment, fabric, fixtures/fittings or decorations at the Performance Area;

3.3.5 not paint or use permanent adhesives on stand or display or flooring within the Venue without the prior approval of BH Live;

3.3.6 not move any of the Venue's decorative plant displays from their permanent positions. Any decorative plant displays required by the Producer/Promoter can be ordered through BH Live's recommended floral supplier and will be charged to the Producer/Promoter at the rate in force during the Performance Period;

3.3.7 use a contractor approved by BH Live to carry out any electrical installations and take all reasonable steps to ensure that the contractor complies with current regulatory requirements in respect of electrical installations and, on request provide a copy of any approval or certificate in respect of the contractor to BH Live;

3.3.8 obtain and maintain all necessary licences and consents and complying with all relevant legislation in relation to the Performance, the installation of the BH Live's Equipment and the use of the Producer/Promoter's Equipment;

3.3.9 not park or permit any vehicle to be parked in the grounds of the Venue in such a way that it causes an obstruction and to use only the areas designated by BH Live for the purposes of unloading and loading (specific loading details are available from the Venue);

3.3.10 remove the Producer/Promoter's Equipment at the end of the Performance Period; and

3.3.11 leave the Performance Area at the end of the Performance Period clean and tidy, undamaged and free of rubbish.

3.4 The use of equipment to take and record images at the Performance by or at the request of the Producer/Promoter is prohibited throughout the Venue unless a permit to operate such equipment has been issued by BH Live. BH Live may at any time revoke such permits.

3.5 The Producer/Promoter shall not sell or supply in any way to the visitors to the Performance or other users of the Venue any goods or services of any description including food and beverages whatsoever except where such sale or supply is in connection with the Performance and is with the written approval of BH Live.

3.6 The Producer/Promoter shall promptly vacate the Performance Area at the end of the Performance Period. If the Producer/Promoter fails to vacate the Venue at the end of the Performance Period, the Producer/Promoter shall be liable for any damage, liability and/or cost (including legal cost) incurred by BH Live due to its late vacation including any loss arising by reason of the resulting impact on BH Live's ability to meet its obligation in respect of any incoming events and/or productions to the Venue or other use of the Venue.

#### **4 BH Live's obligations**

4.1 BH Live shall make the Performance Area available to the Producer/Promoter during the Performance Period, shall co-operate with the Producer/Promoter in relation to the production of the Performance and will use reasonable endeavours to perform its obligations in relation to the Performance specified in the Performance Arrangement Form.

4.2 BH Live shall use reasonable endeavours to provide the Producer/Promoter with BH Live's Equipment as reasonably required for the Performance.

4.3 BH Live will provide security staff, customer assistants, plus the services of a duty operations manager during the Performance Period at a level which BH Live considers appropriate to the Performance.

4.4 BH Live will provide its front of house staff including ushers/usherettes and attendants for the Performance.  
4.5 BH Live will provide a number of technicians as set out on the Performance Arrangement Form to assist the Producer/Promoter to interface with the Venue technical equipment, to oversee the use of the in-house technical facilities and to assist with the operation of the sound and/or lighting to the Producer/Promoter's requirements (which include the Performance Area's sound, lighting, staging and rigging/hanging points).  
4.6 If BH Live is required to utilise additional technicians (including without limitation any additional technicians, follow spot operators or technicians to be hired by the Producer/Promoter due to the complexity of the Performance) the fee payable to the Producer/Promoter shall be adjusted accordingly to reflect the additional cost borne by BH Live at the agreed rate in force during the Performance Period. The reduction in the fee payable to the Producer/Promoter to recognise the additional technical resource incurred by BH Live shall also apply in circumstances where the Promoter/Producer no longer requires the resource unless the Promoter/Producer provides at least forty-eight (48) hours' notice prior to the commencement of the Performance Period.

## 5 Use of Equipment

5.1 The Producer/Promoter shall not bring any equipment, plant, decorative display or exhibition materials into the Venue without prior written consent of BH Live and without previously seeking advice, recommendation or instructions from the Fire Authority and duly complying with the same.

5.2 If the Producer/Promoter wishes to use any form of naked flame, liquid petroleum gas (LPG) or pyrotechnics the Producer/Promoter shall supply the following information in writing to BH Live not less than thirty (30) Business Days before the commencement of the Performance Period for prior written approval:

- 5.2.1 appropriate in date Competent Authority Document issued by the Health and Safety Executive licence for where applicable;
- 5.2.2 risk assessment for the storage and operation;
- 5.2.3 method statement;
- 5.2.4 pyrotechnics effect list;
- 5.2.5 stage plan;
- 5.2.6 safety data sheets; and
- 5.2.7 details of the suitably qualified, competent Gas Safe registered personnel responsible for supplying the appropriate safety certificates upon installation and disconnection to be given to the Venue health and safety adviser prior to the approval of LPG use in the Venue.

5.3 BH Live may request a test of all pyrotechnics prior to the commencement of a Performance and in the interest of safety has the statutory obligation and right to refuse pyrotechnics/ naked flames and LPG in the Performance Area and/or Venue.

5.4 The Producer/Promoter shall provide BH Live with documentation relating to the fire retardancy of drapes, stage sets, shell scheme paneling and any other relevant combustible items to be used during the Performance Period. BH Live reserves the right to test through practical means the flame retardancy of said items.

5.5 Where the Producer/Promoter requires use of a laser system, the Producer/Promoter shall supply sufficient sketches, calculations, and radiometric measurement data to BH Live no later than thirty (30) Business Days before the commencement of the Performance Period. To demonstrate that the laser can be used safely and without risk to health the Producer/Promoter shall provide written information regarding the security arrangements and the conditions under which the laser system may be required to be shut down. BH Live shall charge the Producer/Promoter for the costs of any inspection. The Producer/Promoter shall ensure that the laser and its operation will comply with the Health and Safety Executive Guidance HS (G) 95 — The Radiation Safety of Lasers used for display purposes.

5.6 During the Performance Period the Producer/Promoter may, at its own risk, leave the Producer/Promoter's Equipment in the Performance Area. If the Producer/Promoter or any of its subcontractors or agents leaves Producer/Promoter's Equipment or other equipment or belongings at the Performance Area after the Performance Period, BH Live may, at its discretion, remove, store and/or sell such equipment or belongings, charge the Producer/Promoter for the costs of doing so and (in the event of a sale) account to the Producer/Promoter for any balance arising on the proceeds of sale after deduction of such costs. The Producer/Promoter warrants that it has authority from any agents or subcontractors that it appoints in

connection with the Performance to agree the terms of this clause on behalf of such agents or subcontractors.

## **6 Rigging and Rigging Points**

- 6.1 The Producer/Promoter must comply with BH Live's rigging policy and Permit to Work. BH Live will supply details during the Performance planning process.
- 6.2 Rigging plots should be submitted to BH Live for structural clearance no less than thirty (30) days prior to the Performance. This will ensure a Safe Working Load (SWL) can be reached for any proposed rigging plan.
- 6.3 If BH Live requires advice from a structural engineer, this will be obtained by BH Live and the Producer/Promoter shall be responsible for the cost.
- 6.4 The Producer/Promoter must ensure that all items rigged are in date for testing and marked accordingly with their SWL by an approved lifting engineer and have appropriate safety lines. The Producer/Promoter must be able to produce any test certificates for their rigging equipment. Any load suspended over the public must have secondary safeties fitted.
- 6.5 BH Live has a duty of care to ensure that all rigging and rigged equipment is safe and BH Live's duty technical manager has sole discretion to permit or prevent the use of any suspended load.

## **7 Health and Safety**

- 7.1 The Producer/Promoter must provide BH Live with a written statement of its Health & Safety Policy and any risk assessments and method statements relating to the use of or in connection with the Performance and proposed use of the Venue no later than thirty (30) days prior to the start of the Performance Period.
- 7.2 The Producer/Promoter shall comply with the health and safety policy for the Venue and BH Live's policies and Performance documentation which will be supplied by BH Live prior to the start of the Performance Period. It is the responsibility of the Producer/Promoter to ensure that it and where appropriate those persons attending the Venue during the Performance Period are aware of and comply with the following:
- 7.2.1 fire and emergency evacuation procedures;
  - 7.2.2 location of the assembly areas; and
  - 7.2.3 location of the nearest firefighting equipment, break glass call point, safe evacuation route and fire exits.
- 7.3 The Producer/Promoter may not access designated hazardous areas at the Venue without a Permit to Work from BH Live. BH Live will issue Permits to Work for specific tasks when required and on the day of request.
- 7.4 The Producer/Promoter and BH Live shall each consult and brief one another in relation to any health and safety/security requirements that they have in relation to the Performance prior to the start of the Performance Period.

## **8 Performance Details and Show Rider**

- 8.1 The Producer/Promoter shall provide BH Live with updates in relation to the progress of the production of the Performance at regular intervals and shall promptly provide BH Live with such other information in relation to the Performance as it may reasonably require from time to time.
- 8.2 Not less than fifteen (15) Business Days before the commencement of the Performance Period the Producer/Promoter shall provide BH Live with a detailed written schedule for the staging of the Performance at the Venue in such format as BH Live may reasonably require.
- 8.3 The Performance show rider must be requested in writing by the Producer/Promoter to BH Live no later than fourteen (14) days prior to the start of the Performance Period.

## **9 Access**

- 9.1 The Producer/Promoter will have access to the Performance Area from 08:00 hours to 24:00 hours daily. If the Producer/Promoter requires additional access this will need to be agreed in advance with BH Live.
- 9.2 The Producer/Promoter shall only be allowed access to the roof space if they are competent technical personnel, have obtained the prior written agreement from BH Live and comply with the Venue's Permit to Work, which is available upon request at the Venue. Any damage caused by the Producer/Promoter to the roof

space will be charged to the Producer/Promoter.

9.3 Vehicular access to and into the Venue must be approved in writing by BH Live prior to the Performance Period.

## 10 Marketing

10.1 The Producer/Promoter shall use its best endeavours to assist BH Live to meet its obligations in terms of the marketing of the Performance/Event by securing the participation of its contracted artistes in such press, radio or TV interviews, photo calls, or publicity appearances for the Performance as BH Live may reasonably request.

10.2 The Producer/Promoter agrees that BH Live will retain a sum as specified in the Performance Arrangement Form to reflect its marketing costs. Where BH Live incurs additional marketing costs the Producer/Promoter shall agree an additional retention by BH Live provided the Producer/Promoter is notified before the costs are incurred unless otherwise agreed.

10.3 BH Live shall use reasonable endeavours to include the Performance in BH Live's season brochure. The Producer/Promoter shall respond promptly to any requests made by BH Live and/or its design and print contractor in relation to the Performance and proofing of any promotional literature (including, without limitation, the season brochure). Upon receipt of proofs for approval, the Producer/Promoter shall return any amendments to the design and print contractor directly within the time specified by such contractor and failure to do so shall be deemed to be acceptance of the original proof being used unchanged. If corrections are made to the original proof, a corrected copy of the promotional literature will be forwarded to the Producer/Promoter for information. BH Live and/or its design and print contractor shall not be held responsible for unamended proofs being used in any literature if corrections are not made as stated above and are not received by the contractor by the stated deadline. Where possible, BH Live shall use reasonable endeavours to include subsequent late corrections in all or part of the final literature but the Producer/Promoter shall be liable for the reasonable charges of the design and print contractor in connection with such late changes. BH Live retains full editorial control over content, copy and design of the season brochure.

10.4 The Producer/Promoter shall provide any marketing material specified in the Performance Arrangement Form (together with photographs, biographies and publicity material) by the publicity date specified in the Performance Arrangement Form. The venue specific details included in the marketing material shall require the prior approval of BH Live. Any additional overprinting carried out by BH Live will be recharged to the Producer/Promoter at cost in the Contra Account. In the event of a delay in the delivery of the print material, the Producer/Promoter shall pay to BH Live the amount specified in the Schedule for each complete day of such delay.

10.5 The Producer/Promoter shall deliver adequate front of house display advertising material no later than midday on the day of the first performance of the Performance. BH Live reserves the right to decide where and how much of the advertising material is displayed in the front of house areas.

10.6 All print material relating to the performances shall contain the correct logo and venue specific details of BH Live and shall be approved in advance by BH Live.

10.7 The Producer/Promoter shall provide to BH Live all print material including copy for media advertising at proof stage to enable changes to be made in the case of factual inaccuracy as advised by BH Live. BH Live must also be compliant with the ASA's (Advertising Standards Agency) Committee of Advertising Practice code of practice on how pricing and booking fees should be presented to our customers and, in view of this, it is essential that all printed promotional material, which contains pricing information, is approved by BH Live, before it is printed. BH Live reserves the right not to display any promotional material that does not comply with the aforementioned code of practice.

10.8 The Producer/Promoter hereby grants to BH Live a royalty free licence to use any images and promotional text provided by the Producer/Promoter in connection with the Performance, or any part thereof, for the purposes of electronic publishing and media coverage. The Producer/Promoter hereby agrees to inform BH Live of any time limit or restrictions on the publicity material where applicable.

10.9 In the case of non-professional productions all print material, media advertising and front of house display advertising shall carry the word "amateur" in lettering no smaller than 20% of the size of the billing of the Performance.

10.10 If the Performance involves any proposed use of strobe lights, the Producer/Promoter agrees that a warning of



any such use should be included in the programmes and in the front of house publicity.

## 11 Tickets and Seats

- 11.1 If not agreed in the Performance Arrangement Form, Prices of tickets for the Performance shall be set by BH Live in consultation with the Producer/Promoter.
- 11.2 BH Live shall sell tickets using its standard ticket office facilities and ticketing agencies.
- 11.3 BH Live may give the Producer/Promoter an allocation of tickets for the Performance to sell on behalf of BH Live. Unless otherwise specified on the Performance Arrangement Form, the Producer/Promoter may request an initial allocation of a maximum 25% of the total tickets printed. Any additional allocation shall be agreed with BH Live and is subject to availability and to the agreed capacity of the Performance Area and may be subject to an additional charge to the Producer/Promoter.
- 11.4 If BH Live reasonably expects to sell tickets allocated to the Producer/Promoter, BH Live may request the Producer/Promoter to deliver unsold tickets from the initial Producer/Promoter allocation to BH Live within twelve (12) hours of the request. If the Producer/Promoter does not return unsold tickets in response to BH Live's request and does not sell such tickets itself, the aggregate of the face value of all requested tickets that remain unsold will be deemed to be a cost for which the Producer/Promoter is responsible under clause 13.3.
- 11.5 The Producer/Promoter may appoint sub-agents to sell tickets on behalf of BH Live. The Producer/Promoter shall procure that agency sellers must use Recorded Delivery (first class) and must not post tickets less than seven (7) days prior to the start date of the Performance Period.
- 11.6 Unless otherwise specified on the Performance Arrangement Form, only one ticket type per Performance will be allowed. The Producer/Promoter and any sub-agents appointed by the Producer/Promoter shall be authorised to sell tickets only at the price stated on the ticket as determined in accordance with clause 11.1. No discounts may be offered, or increased price charged, without the prior written consent of BH Live.
- 11.7 Any applicable fees or debit/credit card charges shall be passed onto the end customer in the form of a booking fee by the Party or agency selling the tickets.
- 11.8 Information contained on tickets will include BH Live's name in association with the Producer/Promoter, the time of last admission, and BH Live's right to refuse entry, Performance name, date of Performance, time of performance, ticket number, and dress code if applicable.
- 11.9 The maximum number of tickets printed will be in compliance with the agreed capacity for the Performance Area.
- 11.10 BH Live will be responsible for the checking of all tickets and guest list patrons on admission to the Performance. All tickets will be retained by BH Live.
- 11.11 BH Live may reserve a specified number of House Seats for each performance. These House Seats will be put on sale on the evening of each performance if they are not required by BH Live. BH Live may also reserve a specified number of venue seats for the use of essential companions to accommodate reasonable access for individuals requiring assistance.
- 11.12 The Producer/Promoter shall account to BH Live for all tickets allocated to it that remain unsold by no later than the start of the applicable performance. Failure to comply with the provision in this clause may result in the ticket price for such tickets being deemed to be a cost for which the Producer/Promoter is responsible under clause 13.3.
- 11.13 As soon as possible following the end of each performance, BH Live shall send the Producer/Promoter a statement showing the total ticket sales made by the Producer/Promoter and its sub-agents for the performance. The Producer/Promoter shall account to BH Live for all Box Office Receipts collected or due in respect of ticket sales made by BH Live or its sub-agents.
- 11.14 As soon as possible following the end of the Performance Period BH Live shall send the Producer/Promoter a statement showing:
- 11.14.1 the total ticket sales and Box Office Receipts in respect of tickets sold by BH Live and its third party agents for the Performance (if any);
  - 11.14.2 the total ticket sales and Box Office Receipts in respect of tickets sold by the Producer/Promoter and its sub-agents for the Performance; and
  - 11.14.3 the total number of unsold tickets.

## 12 Merchandising and Programmes

- 12.1 BH Live shall be exclusively entitled to the income derived from the exercise of all front of house privileges including revenue from bars and refreshment rooms, save for merchandise sold by BH Live on behalf of the Producer/Promoter in accordance with clauses 12.4 and 12.5.
- 12.2 If the Performance Arrangement Form indicates that BH Live shall be responsible for the production of programmes and for the supply of merchandise for the Performance, the Producer/Promoter shall provide BH Live's programme producer with accurate and up-to-date show specific information for inclusion in the programme, no later than 28 days prior to the first performance of the Performance.
- 12.3 If the Performance Arrangement Form indicates that the Producer/Promoter shall be responsible for the production of programmes and for the supply of merchandise for the Performance:
- 12.3.1 the Producer/Promoter shall deliver programme material including any photographs or illustrations to be used to BH Live (or such representative as it may nominate) for approval not later than 28 days prior to the first performance of the Performance and BH Live shall be entitled to amend any factual inaccuracy and amend or remove any material BH Live considers detrimental to the reputation of the Venue;
  - 12.3.2 the Producer/Promoter shall deliver an agreed number of programmes to BH Live no later than 24 hours prior to the first performance of the Performance and if the Producer/Promoter fails to comply with this provision, BH Live shall be entitled to charge the Producer/Promoter the amount specified in the Performance Arrangement Form for each complete day of such delay
  - 12.3.3 the Producer/Promoter must request BH Live's approval of the merchandise and programmes no later than 7 days prior to the first performance of the Performance;
  - 12.3.4 unless otherwise indicated to BH Live at the point of requesting approval of the merchandise and programmes under clause 12.3.3, the quality, style and content of any programmes and/ or merchandise should be suitable to be sold pre performance, during the interval and after the performance.
- 12.4 Programmes and/or merchandise supplied by the Producer/Promoter shall at all times remain the property of and be at the risk of the Producer/Promoter and BH Live accepts no liability whatsoever for the safekeeping or condition of such programmes and/or merchandise at any time.
- 12.5 Sales of programmes and merchandise (if any) shall be undertaken by BH Live or its approved contractor. The Producer/Promoter shall pay to BH Live the sales commissions for programmes and merchandise as is specified in the Performance Arrangement Form and such sales commission shall apply notwithstanding the Producer/Promoter using its own staff to sell or distribute the programmes and/or merchandise.
- 12.6 BH Live or its approved contractor shall supply the Producer/Promoter with an invoice for the total programme and merchandise commissions to which VAT at the appropriate rate will be added.

### **13 Charges and Payment**

- 13.1 In consideration of the Producer/Promoter performing its obligations under the Contract, BH Live shall pay the Producer/Promoter a fee based on a share of the Net Box Office Receipts as specified on the Performance Arrangement Form.
- 13.2 In consideration of BH Live providing the goods/services in accordance with clause 13.5 the Producer/Promoter shall pay BH Live the agreed fees.
- 13.3 BH Live shall be entitled to retain the balance of Net Box Office Receipts.
- 13.4 BH Live shall be entitled to deduct from the amount payable to the Producer/Promoter under 13.1, the amounts specified in clause 13.5 (the "Contra Account").
- 13.5 Unless otherwise specified on the Performance Arrangement Form, the Producer/Promoter shall be deemed to be responsible for the following costs (which shall be deducted from its share of Net Box Office Receipts):
- 13.5.1 the cost of cleaning or restoring relevant parts of the Performance Area and BH Live's Equipment, fabric, fixtures fittings and decorations to the condition they were in at the commencement of the Performance Period to the extent that the time required for this exceeds the time allowed for on the Performance Arrangement Form;
  - 13.5.2 the cost of BH Live storing, removing or selling the Producer/Promoter's Equipment or other belongings of the Producer/Promoter, its agents or subcontractors left at the Venue after the Performance Period in accordance with clause 5.6;
  - 13.5.3 if the Producer/Promoter fails to vacate the Performance Area and/or the Venue at the end of the Performance Period, an amount equal to the standard current rate which BH Live charges at the time of occupation for each hour or part of an hour during which the Performance Area and/or Venue continues to be occupied by the Producer/Promoter;
  - 13.5.4 any other costs for which the Producer/Promoter is responsible under the Contract, including (without limitation) any costs stated to be for the account of the Producer/Promoter on the Performance Arrangement Form, and the costs stated to be for the account of the Producer/Promoter under clauses



4.6, 6.3, 10.2, 11.4 and 11.12 of these Terms;

- 13.5.5 the cost of any additional work agreed to be done by BH Live at the request of the Producer/Promoter, not included in the Performance Arrangement Form and not stated to be for the responsibility of BH Live under these Terms.
- 13.6 The parties shall use reasonable endeavours to agree the amount of the Contra Account within 21 days of the end of the Performance Period. BH Live shall pay the net amount due to the Producer/Promoter under clauses 13.1 to 13.4 within 14 days of the agreement of the Contra Account (or, if later, within 7 days of receipt of a valid invoice from the Producer/Promoter for the agreed amount). If the Contra Account is not agreed within 28 days of the end of the Performance Period, BH Live shall pay the undisputed amount within 49 days of the end of the Performance Period (or, if later, within 7 days of receipt of a valid invoice from the Producer/Promoter for the undisputed amount) and the parties shall seek to resolve the dispute in accordance with the provisions of clause 29.
- 13.7 Unless otherwise specified on the Performance Arrangement Form BH Live will, on request and against presentation of a valid invoice, pay an advance of an agreed amount to the Producer/Promoter on the final Friday of the Performance Period.
- 13.8 BH Live may at any time, without limiting its other rights or remedies set off any amount owing to it by the Producer/Promoter against any amount payable by BH Live to the Producer/Promoter, including any amounts retained by the Producer/Promoter in respect of tickets sold on behalf of BH Live.
- 13.9 If BH Live, in its reasonable discretion considers that, the purchasers of tickets for an Performance may have grounds to claim a total or partial refund of the ticket price for reasons attributable to the Producer/Promoter (including without limitation a failure to deliver a production that matches up the advertising claims made for the Performance), BH Live shall be entitled to withhold from any payment due under clause 13.6, such sum for such period of time as it deems reasonable until such claims have been resolved or become time barred or BH Live considers that the risk of claims has passed.
- 13.10 If there are insufficient Net Box Office Receipts to reimburse BH Live for the costs deemed to be for the account of the Producer/Promoter under the Contract the Producer/Promoter shall promptly on demand pay an amount equal to the shortfall to BH Live.
- 13.11 All charges quoted by BH Live under the Contract shall be exclusive of VAT.
- 13.12 In the event that a non EU resident artist is engaged in the Performance the Producer/Promoter undertakes to inform BH Live as soon as is practicable. With effect from 1 May 1987, Schedule 11 of the Finance Act 1986 imposes a duty upon all theatre managers to withhold tax at the basic rate from all payments made in whatever form, whether directly or indirectly to non EU resident artists in respect of an activity performed in the UK. Unless authority is received in advance from the Foreign Entertainers Unit of the Inland Revenue, 5th Floor, City House, Edmund Street, Birmingham, B3 2JH, to confirm that a reduced withholding is appropriate, then the Producer/Promoter accepts that such deductions are statutorily required of BH Live. If the Producer/Promoter wishes to apply for a reduced withholding, then it is accepted that it is the Producer/Promoter's responsibility to liaise with the Foreign Entertainers Unit and provide them with the information they require concerning any non EU resident artist.

## **14 Limitation of Liability**

- 14.1 Nothing in the Contract limits or excludes either Party's liability for:
- 14.1.1 death or personal injury caused by its negligence;
  - 14.1.2 fraud or fraudulent misrepresentation;
  - 14.1.3 any other liability that cannot be limited or excluded by law.
- 14.2 Subject to clause 14.1, neither Party shall be liable to the other, whether in contract, tort (including negligence), for breach of statutory duty, or otherwise, arising under or in
- 14.3 connection with the Contract for:
- 14.3.1 loss, theft or damage to any personal property; or
  - 14.3.2 loss or damage which may result from the use of BH Live's car parking facilities and the Producer/Promoter shall ensure that contractors and visitors to the Venue are made aware of this exclusion.
- 14.4 Subject to clause 14.1 BH Live shall under no circumstances whatever be liable to the Producer/Promoter, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or

any indirect or consequential loss arising under or in connection with the Contract including, but not limited to:

- 14.4.1 loss of profits;
- 14.4.2 loss of sales or business;
- 14.4.3 loss of agreements or contracts;
- 14.4.4 loss of anticipated savings;
- 14.4.5 loss of or damage to goodwill; or
- 14.4.6 loss of use or corruption of software, data or information

14.5 BH Live's total liability to the Producer/Promoter, whether in contract, tort (including negligence), for breach of statutory duty, or otherwise, arising under or in connection with the Contract shall be limited to the amount of BH Live's net share of the revenue from ticket sales for the Performance after deduction of costs.

14.6 The terms implied by sections 3 to 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.

## 15 Producer/Promoter's Liability, Indemnity and Insurance

15.1 The Producer/Promoter will indemnify BH Live in respect of all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other professional costs and expenses) suffered or incurred by BH Live in respect of any cost incurred or loss or damage arising under common law or statute or any of its agents, sub-contractors or employees arising out of or in connection with:

- 15.1.1 the negligence of the Producer/Promoter, its employees or agents breach or negligent performance or non-performance of the Contract;
- 15.1.2 the enforcement of this Contract;
- 15.1.3 any claim made against BH Live for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with:
  - (a) the performance of the Performance at the Venue (unless the infringing intellectual property rights contained in the performance were supplied by BH Live); or
  - (b) the use by BH Live of any rights granted to BH Live by the Producer/Promoter in connection with a Performance, including under clause 22.4;
- 15.1.4 any claim made against BH Live by a third party to the extent that such claim arises out of the breach, negligent performance or failure or delay in performance of the Contract by the Producer/Promoter, its employees, agents or subcontractors;
- 15.1.5 any claim made against BH Live by a third party for death, personal injury or damage to property arising out of or in connection with defective goods, to the extent that the defect in the goods is attributable to the acts or omissions of the Producer/Promoter, its employees, agents or subcontractors;
- 15.1.6 costs incurred by BH Live under this Contract or otherwise at the Producer/Promoter's request and invoiced to the Producer/Promoter's sub-contractor where these remain unpaid; or
- 15.1.7 costs incurred by BH Live to ensure that the Performance complies with all necessary licences consents and all relevant legislation.

15.2 Notwithstanding the provisions of clause 15.1 the Producer/Promoter shall reimburse BH Live on written demand for any costs or losses sustained or incurred by BH Live arising from the Producer/Promoter Default including, without limitation any costs, including in respect of any legal claim and legal expenses incurred in relation to any subsequent user of the Venue being unable to enter the Venue or the Performance Area.

15.3 The Producer/Promoter will take out and maintain an appropriate insurance policy with reputable insurers for such amounts as is necessary to cover any liability arising under this Contract including without limitation:

- 15.3.1 public liability insurance with cover of not less than £2 million, £5 million or £10 million (for a single Performance or series of related Events in a single calendar year) as specified on the Performance Arrangement Form; and
- 15.3.2 the cancellation of the Performance whether by reason of a Force Majeure Performance under clause 15.4 or by the Producer/Promoter in respect of the Producer/Promoter's liability to pay cancellation charges under clause 18.

15.4 The Producer/Promoter shall produce evidence of the relevant insurances to meet its obligations under clause 15.3 to BH Live before the commencement of the Performance Period.

## **16 Force Majeure Performance**

16.1 If BH Live is prevented, hindered or delayed in or from performing any of its obligations under the Contract by a Force Majeure Performance, BH Live shall not be in breach of the Contract or otherwise liable for any such failure or delay in the performance of such obligations. The time for performance of such obligations shall be extended accordingly.

16.2 BH Live shall:

16.3

16.3.1 having regard to the nature of the Force Majeure Performance and the date of the commencement of the Performance Period and at BH Live's discretion, notify the Producer/Promoter of the Force Majeure Performance, the date on which it started, its likely or potential duration, and the effect of the Force Majeure Performance on its ability to perform any of its obligations under the Contract; and

16.3.2 use all reasonable endeavours to mitigate the effect of the Force Majeure Performance on the performance of its obligations.

16.4 If BH Live reasonably considers that the Force Majeure Performance will prevent BH Live from making the Performance Area available for the Performance Period BH Live shall, without limiting its other rights or remedies, have the right to terminate this Contract immediately by giving written notice to the Producer/Promoter.

## **17 Performers and Unavailability of Performance**

17.1 If the Performance includes child performers of statutory school age a letter of exemption must be produced from the child's home local authority stating a child performance licence is not required; otherwise each child must have a copy of their performance licence. The Producer/Promoter shall ensure that chaperones looking after the children produce a copy of their registration and that they shall not look after more than twelve (12) children each or have any other duties. All documentation must be obtained by the Producer/Promoter and produced to BH Live prior to the commencement of the Performance Period.

17.2 No animals except guide dogs are permitted into the Venue. Any animal used in a performance requires a licence in the form specified by BH Live.

17.3 If the Performance is unavailable or if any of the principal performers appearing or scheduled to appear in the Performance shall fail to appear through illness or unavoidable accident or from any other cause, the Producer/Promoter shall notify BH Live immediately and shall provide a suitable substitute or substitutes to the reasonable satisfaction of BH Live in which case the Producer/Promoter shall indemnify BH Live as follows:

17.3.1 if a suitable alternative Performance or principal performer is booked for the entire Performance Period, in respect of any expenditure incurred by BH Live in connection with the Performance, including a reasonable charge for time spent by BH Live's staff as a result of disruption, including the costs of advertising incurred for the Performance to the date of cancellation or substitution, and the costs of advertising the cancellation or substitution; and

17.3.2 if a suitable alternative Performance is booked for part of the Performance Period only, in respect of those items of cost set out in clause 17.3.1 above together with the Cancellation Fee calculated in accordance with clause 19 of the Terms pro-rata in respect of the Performance Period when the Performance will not be performed.

17.4 If the substitute is not acceptable to BH Live this shall be a material breach of the Contract by the Producer/Promoter and BH Live shall be entitled to terminate this Agreement under the provisions of clause 20 of these Terms. On termination under the provisions of this clause:

17.4.1 the Cancellation Fee calculated in accordance with clause 19 of the Terms shall apply as if the Producer/Promoter had cancelled the Contract; and

17.4.2 the Producer/Promoter shall have no claim against BH Live for remuneration, expenses or costs incurred as a consequence of the termination.

## **18 Suspension or Termination by BH Live**

18.1 If BH Live's performance of any of its obligations under the Contract is prevented or delayed by any

Producer/Promoter Default BH Live shall, without limiting its other rights or remedies, on giving notice to the Producer/Promoter (which shall be effective from the time and date given but which shall be confirmed by written notice as soon as reasonably practicable) have the right to suspend its obligations under the Contract until the Producer/Promoter remedies the Producer/Promoter Default, and to rely on the Producer/Promoter Default to relieve it from the performance of any of its obligations to the extent the Producer/Promoter Default prevents or delays BH Live's performance of any of its obligations.

18.2 BH Live may, at any time, cancel or postpone the whole or any part of the Contract including without limitation by reason of a Force Majeure Performance. BH Live shall use reasonable efforts, but shall not be obliged, to re-locate or make other arrangements for the Producer/Promoter to minimise the effect of such cancellation or postponements of the Performance.

18.3 Without limitation to the circumstances in which the Parties may terminate this Contract under clause 19, BH Live may suspend or terminate the Contract by written notice immediately without any liability for any loss or damage if:

18.3.1 in the opinion of BH Live the Performance is likely to lead to a breach of the peace, cause religious offence, offend public decency or cause a breach of the provisions of clause 28; or

18.3.2 the Producer/Promoter intends to use the Performance Area for any purpose other than the Performance specified in the Performance Arrangement Form.

18.3.3 the Producer/Promoter becomes subject to any of the events listed in clause 20.1.4 or BH Live reasonably believes that the Producer/Promoter is about to become subject to any of them, or if the Producer/Promoter fails to pay any amount due under this Contract on the due date for payment.

18.4 Where advance sales for any individual performances of the Performance are particularly low (as BH Live in absolute discretion acting reasonably determines), BH Live reserves the right to cancel such performances and offer patrons alternative performances or, in exceptional circumstances, a refund.

## 19 Cancellation by Producer/Promoter

19.1 The Producer/Promoter may at any time cancel the whole or any part of the Contract by written notice to BH Live in which event the provisions of this Clause will apply.

19.2 If the Producer/Promoter cancels the whole or any part of the Contract the Producer/Promoter will be charged a Cancellation Fee to be calculated by BH Live on the basis and by reference to the number of days prior to the commencement of the Performance Period as set out in this clause in the absence of any agreed terms set out in the Performance Arrangement Form.

19.3 If the date on which the Producer/Promoter gives notice to cancel the Contract is more than 18 months before the commencement of the Performance Period the Cancellation Fee will be twenty-five per cent (25%) of the Relevant Amount. For these purposes, the "**Relevant Amount**" shall be the aggregate of all Net Box Office Receipts expected from ticket sales for the Performance (assuming a sale of all tickets based on Maximum Attendance Numbers), minus the amount that would have been payable to the Producer/Promoter under clause 13.1.

19.4 If the date on which the Producer/Promoter gives notice to cancel the Contract is less than 18 months but more than 9 months before the commencement of the Performance Period the Cancellation Fee will be fifty per cent (50%) of the Relevant Amount.

19.5 If the date on which the Producer/Promoter gives notice to cancel the Contract is less than 9 months but more than 3 months before the commencement of the Performance Period the Cancellation Fee will be seventy-five per cent (75%) of the Relevant Amount.

19.6 If the date on which the Producer/Promoter gives notice to cancel the Contract is less than 3 months before the commencement of the Performance Period the Producer/Promoter will be liable to pay BH Live the full amount of the Relevant Amount.

## 20 Termination for Default

20.1 Either Party may terminate the Contract with immediate effect by giving the other Party notice in writing, if the other Party or in the case of the Producer/Promoter if its employees, agents, licensees or invitees or any person using the Venue in connection with the Performance:

20.1.1 commits a material breach of the Contract which:

- (a) is not capable of remedy; or
  - (b) is capable of remedy, but which the other Party fails to remedy within thirty (30) days (or, in the case of a breach requiring remedy at any time during the Performance Period, twenty-four (24) hours) of receiving written notice from the Party specifying the breach and requiring the other Party to remedy the breach;
- 20.1.2 commits a persistent breach regardless of whether such breach is minor, trivial or capable of being remedied;
- 20.1.3 fails to comply with all applicable laws, regulations, regulatory requirements and codes of any relevant jurisdiction as amended and in force from time to time; or
- 20.1.4 suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 OR (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986.

## **21 Consequences of Termination**

- 21.1 Termination of the Contract, for any reason, shall not affect the accrued rights, remedies, obligations or liabilities of the Parties existing at termination. On termination of the Contract for any reason, the Producer/Promoter shall immediately pay any amounts due under clause 19.

## **22 Intellectual Property Rights**

- 22.1 It is the Producer/Promoter's responsibility to ensure that it does not infringe any third party's copyright or any other intellectual property right during the Performance Period and in promotional material for the Performance. BH Live shall not have any liability for any such infringements by the Producer/Promoter.
- 22.2 The Producer/Promoter shall at all times whether during or after termination or expiry of the Contract indemnify and keep indemnified BH Live against all losses, damages, costs, expenses and liabilities (including legal fees) incurred by or awarded against BH Live or their officers, agents, employees, members or successors in interest in connection with any proceedings, claim or action against BH Live as a result of any failure by the customer to comply with its obligations under this clause.
- 22.3 All materials produced by BH Live in connection with the Performance are the exclusive property of BH Live and copyright and related rights in or arising out of or in connection with the Performance, trademarks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how) of BH Live shall be owned by BH Live.
- 22.4 The Producer/Promoter grants to BH Live in perpetuity the right to use the Producer/Promoter's name, image and details of the Performance in any media including by use on promotional material and press releases produced by or on behalf of BH Live for the promotion of the Venues and BH Live's business. The Producer/Promoter warrants to BH Live that it has obtained all third party permissions, including in respect of the name and image of the principal performers, necessary to grant the rights specified in this clause.

## **23 Performance Licences**

- 23.1 The Producer/Promoter shall ensure that no copyright work shall be performed other than:
- 23.1.1 as authorised by the current licence of the Performing Rights Society Limited (PRSL) a copy of which can be inspected at the Venue on request and shall be deemed to have been read by the Producer/Promoter;
  - 23.1.2 any work in respect of which the licence of the owner of the copyright for the performance produced to BH Live before the start of the Performance Period.
- 23.2 For the purpose of this clause 23.2, copyright includes copyright subsisting in a film, video, tape recording or broadcast as such but not the copyright subsisting in a recording (not being a film, video tape, recording or broadcast) as such. References to the performance of a copyright work shall be deemed to include the playing or reproduction of the work by means of a recording or any other means whatsoever.



23.3 The Producer/Promoter shall at all times whether during or after termination or expiry of the Contract indemnify and keep indemnified BH Live against any material adverse reputational damage as a result of any failure by the Producer/Promoter to comply with its obligations under this clause.

## **24 Filming and Television**

24.1 The Producer/Promoter shall not take or cause to be taken any filming or television in the Performance Area and/or the Venue at any time except with the written permission of BH Live.

24.2 BH Live will charge the Producer/Promoter a facility fee in respect of permitted filming as specified on the Performance Arrangement Form or if no fee is quoted the fee published by BH Live at the date of the Performance.

## **25 Data Protection**

25.1 For the purpose of the General Data Protection Regulation ("GDPR"), BH Live is a data controller and the terms 'personal data' and 'data processing' used in this clause shall have the meanings given to them in GDPR.

25.2 The Producer/Promoter acknowledges and agrees that personal data may be processed by and on behalf of BH Live and/or shared with BH Live's partner organisations in connection with the Performance.

25.3 BH Live may also disclose personal information to:

25.3.1 any company which BH Live controls or which controls BH Live (which means the ability to direct the affairs of that other company, whether by ownership of shares or otherwise); and

25.3.2 any of BH Live's partner organisations in connection with the Performance for which the Producer/Promoter provided the data.

## **26 Anti-Bribery Compliance**

26.1 Each Party undertakes that it shall:

26.1.1 comply with all applicable laws, statutes, regulations, and codes relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010;

26.1.2 have and shall maintain in place throughout the term of the Contract its own policies and procedures, including but not limited to adequate procedures under the Bribery Act 2010, to ensure compliance with the requirements of sub clause 27.1.1; and

26.1.3 promptly report to the other Party any request or demand for any undue financial or other advantage of any kind received by that Party in connection with the performance of this agreement.

26.2 Breach of this clause 27 shall be deemed a material breach under clause 20.

## **27 Compliance with legislation**

27.1 The Producer/Promoter shall comply fully with all statutes, rules, regulations, orders, bye-laws or other requirements whether for ensuring public order safety or decency or for any other purposes whatsoever affecting the use of the Venue and with all requirements of the Health and Safety Executive of the relevant police and fire authorities and of BH Live including these Terms and has a duty to obtain all licences, consents and approvals necessary for the Performance.

27.2 The Producer/Promoter shall ensure that it complies with the Smoke-free (Premises and Enforcement) Regulations 2006 at all times during the Performance Period. The Producer/Promoter shall be liable for and indemnify BH Live against all losses, damages, costs, expenses and liabilities (including legal fees) incurred by or awarded against BH Live in connection with any proceedings, claim or action against BH Live as a result of any failure by the Producer/Promoter to comply with its obligations under the Smoke-free (Premises and Enforcement) Regulations 2006.



## **28 Dispute Resolution**

- 28.1 If a dispute arises out of or in connection with the Contract or the Performance, including in relation to its validity or enforceability then the Parties shall follow the procedure set out in this clause:
- 28.1.1 either Party shall give to the other written notice of the dispute, setting out its nature and full particulars (Dispute Notice), together with relevant supporting documents. On service of the Dispute Notice, the Director of Venues of BH Live and the Producer/Promoter Contact shall attempt in good faith to resolve the dispute;
- 28.1.2 if the Director of Venues of BH Live and Producer/Promoter Contact are for any reason unable to resolve the dispute within thirty (30) days of service of the Dispute Notice, the dispute shall be referred to the Chief Executive of BH Live and chief executive or managing director of the Producer/Promoter who shall attempt in good faith to resolve it; and
- 28.1.3 if the Chief Executive of BH Live and chief executive or managing director of the Producer/Promoter are for any reason unable to resolve the Dispute within thirty (30) days of it being referred to them, the Parties will attempt to settle it by mediation in accordance with the CEDR Model Mediation Procedure. Unless otherwise agreed between the Parties, the mediator shall be nominated by CEDR Solve. To initiate the mediation, a Party must serve notice in writing (ADR notice) to the other Party requesting a mediation. A copy of the ADR notice should be sent to CEDR Solve to initiate the mediation process as soon as possible.
- 28.2 The commencement of mediation shall not prevent the Parties commencing or continuing arbitration proceedings in relation to the dispute under clause 29.3 which clause shall apply at all times.
- 28.3 All disputes and differences arising out of or in connection with this Contract, which cannot be resolved between the Parties shall be referred to a single arbitrator arbitration. It is agreed that:
- 28.3.1 the tribunal shall consist of one arbitrator and in default of the Parties' agreement as to the arbitrator(s), the appointing authority shall be the Chartered Institute of Arbitrators in London; and
- 28.3.2 the seat of the arbitration shall be London and the language of the arbitration shall be English.
- 28.4 in accordance with and subject to the provisions of the Arbitration Act 1996 or any statutory modification or re-enactment thereof for the time being in force.

## **29 Assignment**

- 29.1 The Contract is personal to the Parties and neither Party shall assign, transfer, mortgage, charge, declare a trust of or deal in any other manner with any or all of its rights and obligations under the Contract without the prior written consent of the other Party (such consent not to be unreasonably withheld or delayed).

## **30 Waiver**

- 30.1 The failure of either Party to insist upon strict performance of any provision of the Contract or the failure of either Party to exercise any right or remedy will not constitute a waiver of that right or remedy and will not cause diminution of the obligations under the Contract
- 30.2 No waiver will be effective unless it is expressly stated to be a waiver and communicated to the other Party in writing in accordance with the provisions of clause 35.
- 30.3 A waiver of any right or remedy arising from a breach of the Contract will not constitute a waiver of any right or remedy arising from any other or subsequent breach of the Contract.

## **31 Entire Agreement**

The Contract and any documents referred to in it constitute the whole Contract between the Parties and supersede any previous arrangement, understanding or contract between them relating to the subject matter of the Contract.

## **32 Severance**

- 32.1 Each clause or provision of the Contract will be separately construed. If any provision of this Contract is held

invalid, illegal or unenforceable for any reason by any court of competent jurisdiction, such provision will be severed and the remainder of the provisions of this Contract will continue in full force and effect.

32.2 In the event of a holding of invalidity, illegality or unenforceability so fundamental as to prevent the accomplishment of the purpose of the Contract, the Parties will immediately commence good faith negotiations to remedy such invalidity, illegality or unenforceability.

### **33 Changes to Contract**

33.1 Except as set out in these Terms, no variation of the Contract, including but not limited to changes to the Performance Arrangement Form, the introduction of any additional terms and conditions or changes to the commission, bookings or exclusive use shall be effective unless it is agreed in writing and signed by the authorised representatives of the Parties.

33.2 Each variation of the Contract shall be evidenced by the issue by BH Live of a revised Performance Arrangement Form which shall be dated as at the date of the variation.

### **34 Notices**

34.1 A notice given by a Party to a Party under or in connection with the Contract will be in writing and delivered by hand or sent by pre-paid first class special delivery post or next working day courier delivery service (providing proof of postage or proof of delivery):

34.1.1 to the Producer/Promoter for the attention of the Producer/Promoter Contact at the address given in the Performance Arrangement Form, or to such other address as is notified by a Party from time to time; and

34.1.2 to BH Live for the attention of the Director of Venues at its registered office address.

34.1.3 Any notice or communication will be deemed to have been received:

34.1.4 If delivered by hand, when left at the relevant address referred to in this clause;

34.1.5 If sent by pre-paid first class special delivery post on the date and at the time (if specified) shown on the postal service record of delivery; and

34.1.6 If delivered by commercial courier on the date and at the time that the courier's delivery receipt is signed.

34.2 The provisions of this clause will not apply to the service of any proceedings or other documents in any legal action.

### **35 Rights of Third Parties**

35.1 Except where expressly provided for in the Contract, the Parties agree that a person who is not a party to the Contract may not enforce any of its terms by virtue of the Contracts (Rights of Third Parties) Act 1999.

### **36 Governing Law and Jurisdiction**

36.1 The Contract 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 the law of England and Wales.

36.2 The Parties resolve to the non-exclusive jurisdiction of the courts of England and Wales to resolve any disputes relating to the Contract.

## APPENDIX 1 - DEFINITIONS

<b>BH Live</b>	means BH Live, a company limited by guarantee and incorporated with number 07092112 having its registered office at Bournemouth International Centre, Exeter Road, Bournemouth, Dorset, BH2 5BH.
<b>BH Live's Equipment</b>	means any equipment, including tools, systems, cabling or facilities, provided by BH Live and used directly or indirectly for the Performance which are not the subject of a separate agreement between the Parties or between the Producer/Promoter and an approved contractor.
<b>Box Office Receipts</b>	means the actual box office receipts received by (a) BH Live and its agents; and (b) the Producer/Promoter and its agents arising only from the sale of tickets for performances of the Performance, after deduction credit card commission, box office commission or other booking fees and after deduction of any discounts offered on the sale of tickets.
<b>Business Day</b>	means a day (other than a Saturday, Sunday or public holiday) when banks in London are open for business.
<b>Cancellation Fee</b>	means the amount charged to the Producer/Promoter in the event of cancellation of the Contract in the circumstances and calculated as set out in clause 19.
<b>Contract</b>	means the contract entered into between BH Live and the Producer/Promoter that is subject to these Terms.
<b>House Seats</b>	seats reserved by BH Live for the press, other obligatory and certain discretionary complimentary tickets for the Performance.
<b>Performance Arrangement Form</b>	means the order form setting out the terms on which the Producer/Promoter will deliver the Performance, subject to these Terms.
<b>Performance Period</b>	means the date(s) and time(s) when the Performance will be delivered
<b>Producer/Promoter</b>	means the person that will deliver the Performance to BH Live, as identified on the Performance Arrangement Form.
<b>Producer/Promoter Contact</b>	means the Producer/Promoter's key contact for the Performance as set out on the Performance Arrangement Form.
<b>Producer/Promoter Default</b>	means any act or omission by the Producer/Promoter or failure by the Producer/Promoter to perform any relevant obligation under the Contract.
<b>Producer/Promoter's Equipment</b>	means any equipment, systems, cabling or facilities provided by the Producer/Promoter or by any production provider appointed by the Producer/Promoter and used directly or indirectly in the production of the Performance.
<b>Effective Date</b>	has the meaning set out in clause 2.2.
<b>Force Majeure Performance</b>	means an act of God, war, riot, invasion, fire, explosion, breakdown of machinery, failure of supply of electricity or other utilities, leakage of water, flood, accident, external road or building works, strike or walkout, government interference, regulations, appropriates, attacks by terrorist or other activities or extremist organisations or on the instructions of the police or armed forces or other conditions similar to those mentioned above and outside the control of BH Live the Venue shall be closed or not available for hiring.

<b>Maximum Attendance Numbers</b>	means any Venue capacity specified on the Performance Arrangement Form or agreed number of delegates or visitors having regard to room capacity.
<b>Net Box Office Receipts</b>	means the total of all Box Office Receipts for the Performance after deduction of a sum equal to the prevailing standard rate of VAT.
<b>Permit to Work</b>	means the conditions applied by BH Live in respect of access to a Venue granted to a Producer/Promoter or an approved contractor which contains safe working procedures.
<b>Terms</b>	means these terms and conditions as amended from time to time in accordance with clause 34.
<b>VAT</b>	means value added tax chargeable under the Value Added Tax Act 1994 and any similar replacement or additional tax.
<b>Venue</b>	means the BH Live venue or part thereof identified in the Performance Arrangement Form as Performance Area which is the subject of the Contract.