

# The Abbey Theatre

## Statement of Terms and Conditions of Hire

Please note that the Agreement comprises:

(1) the Order Form

and

(2) this Statement of Terms and Conditions of Hire

### 1. INTERPRETATION

1.1 The following definitions and rules of interpretation apply in this Statement of Terms and Conditions.

<b>“Abbey Theatre”</b>	The Abbey Theatre Amharclann Na Mainistreach, registered in Ireland as a company limited by guarantee with registered number 414400 and its registered address at 26/27 Lower Abbey Street, Dublin 1, D01 K0F1;
<b>“Agreement”</b>	the Order Form and this Statement of Terms and Conditions;
<b>“Approval Fee”</b>	the sample fee amount set out in the Order Form;
<b>“Business Day(s)”</b>	a day, other than a Saturday, Sunday or public holiday in Ireland, when banks in Dublin are open for business;
<b>“Business Hours”</b>	the period from 9.00am to 5.00pm on any Business Day;
<b>“Commencement Date”</b>	the date on which the Order Form was signed by both the Abbey Theatre and Lessee (which may or may not also be the same date as the Handover Date);
<b>“Data Protection Laws”</b>	the Data Protection Acts 1988 to 2018, the GDPR, and any other applicable laws or regulatory requirements relating to the processing of personal data and to privacy including Directive 2002/58/EC and the European Communities (Electronic Communications Networks and Services) (Privacy and Electronic Communications) Regulations 2011, as such legislation shall be supplemented, amended, revised or replaced from time to time and all guidance and codes of practice issued by a relevant supervisory authority, such as the Data Protection Commission, from time to time and which are applicable to a party;

<b>“Equipment”</b>	the items of equipment listed in the Order Form, which may include costumes, accessories, footwear, props and other equipment, and which includes all substitutions, replacements or renewals of such equipment and all related accessories, manuals and instructions provided for such;
<b>“Excess Fee”</b>	a fee imposed on the Lessee for a Total Loss that is in excess of the Security Deposit;
<b>“Fees”</b>	the payments made by or on behalf of Lessee for hire of the Equipment, which shall comprise the Initial Fee and (where applicable in each case) the Approval Fee, the Recurring Fee, the Repair Fee, the Late Fee and the Security Deposit;
<b>“Handover”</b>	the transfer of physical possession of the Equipment to the Lessee at the Site;
<b>“Handover Date”</b>	the date on which Handover takes place (which may or may not also be the same date as the Commencement Date);
<b>“Hire Purpose”</b>	the Lessee’s reason for hiring the Equipment and use to be made of the Equipment, as set out in the Order Form;
<b>“Initial Fee”</b>	the fee payable by the Lessee to the Abbey Theatre relating to the hire of the Equipment, the amount of which is set out in the Order Form;
<b>“Intellectual Property”</b>	the intellectual property, including without limitation all and any patents, trademarks, logos, business or trade names, database, service marks, copyright, rights in the nature of copyright, designs and design rights, trade secrets, know-how, get-up, computer programmes, rights in any domain names and all other intellectual property of any nature, whether registered or recorded in any manner or otherwise (to the fullest extent thereof and for the full period thereof and all extensions and renewals) and all applications for any of the foregoing and all rights (together with all goodwill) pertaining to the foregoing anywhere in the world;

<b>“Intellectual Rights”</b>	<b>Property</b>	all Intellectual Property including patents (including utility models and inventions), trade marks (including service marks, trade names and business names), design rights, copyright and related rights (including rights in respect of software), internet designations (including domain names), topography rights (including rights in respect of mask works and semiconductors), moral rights and database rights, (whether or not any of these is registered and including any application for registration of any such rights), know-how, confidential information and trade secrets for the full term of such rights and including any extension to or renewal of the terms of such rights and all rights or forms of protection of a similar nature or having similar effect to any of these which may exist anywhere in the world;
<b>“Late Fee”</b>		a daily fee payable by the Lessee to the Abbey Theatre relating to the Lessee’s return of Equipment on a date after the Return Date, which may be charged as a daily amount equal to the daily Approval Fee (or if no Approval Fee was actually charged, an amount equivalent to the Approval Fee);
<b>“Lessee”</b>		the party to whom the Equipment shall be leased, by the Abbey Theatre, pursuant to the Order Form;
<b>“Order Form”</b>		the signed order form which appends the Statement of Terms and Conditions and sets out (inter alia) the sums payable under the Agreement and the Hire Purpose;
<b>“Recurring Fee”</b>		a fee payable by the Lessee to the Abbey Theatre relating to the hire of the Equipment beyond the Rental Period as agreed between the parties and the amount of which is set out in the Order Form or otherwise agreed between the Abbey Theatre and the Lessee;
<b>“Rental Period”</b>		the period of hire as set out in the Order Form, being the period beginning on the Handover Date, and at the sole of the risk of the Lessee, which includes any further term during which the Equipment is in the possession, custody or control of the Lessee, unless and until the Agreement is terminated earlier in accordance with its terms;
<b>“Repair Fee”</b>		a fee payable by the Lessee to the Abbey Theatre relating to the Abbey Theatre’s reasonably incurred costs (including third party costs) in repairing any Equipment returned by the Lessee which has been damaged beyond Wear and Tear;
<b>“Return Date”</b>		the date on which the Equipment is to be returned to the Site by the Lessee at the Site, during Business Hours, which shall be the date on which the Rental Period ends;

<b>“Security Deposit”</b>	the deposit amount set out in the Order Form;
<b>“Site”</b>	the Abbey Theatre’s premises at Finglas Business Centre, Jamestown Road, Finglas, Dublin 11;
<b>“Statement of Terms and Conditions”</b>	the statement of terms and conditions of hire of the Equipment;
<b>“Total Loss”</b>	due to the Lessee’s default, the Equipment is, in the Abbey Theatre’s reasonable opinion, damaged beyond repair (including but not limited to irremovable stains, excessive rips, fake blood, broken down), returned requiring specialised cleaning, lost, stolen, seized, altered or confiscated;
<b>“Wear and Tear”</b>	wear and tear to Equipment that is, in the Abbey Theatre’s reasonable opinion, ordinary and to be expected given the nature of the Equipment;
<b>“Valid ID”</b>	a passport or driving licence required for security reasons for visiting the Site and hiring the Equipment; and
<b>“VAT”</b>	value-added tax chargeable in Ireland.

- 1.2 Clause headings shall not affect the interpretation of this Statement of Terms and Conditions.
- 1.3 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality) and that person’s legal and personal representatives, successors and permitted assigns.
- 1.4 The Order Form and this Statement of Terms and Conditions shall together form the Agreement and shall be read together and any reference to this Statement of Terms and Conditions includes the Order Form.
- 1.5 A reference to a **company** shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.6 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- 1.7 Unless the context otherwise requires, a reference to one gender shall include a reference to the other gender.
- 1.8 A reference to legislation or a legislative provision is a reference to it as amended, extended or re-enacted from time to time.
- 1.9 A reference to legislation or a legislative provision shall include all subordinate legislation made from time to under that legislation or legislative provisions.
- 1.10 A reference to **writing** or **written** includes email.

- 1.11 Any obligation on a party not to do something includes an obligation not to allow that thing to be done.
- 1.12 A reference to **this Statement of Terms and Conditions** or to any other agreement or document is a reference to this Statement of Terms and Conditions or such other agreement or document, in each case as varied from time to time.
- 1.13 References to clauses are to the clauses of this Statement of Terms and Conditions.
- 1.14 Any words following the terms **including, include, in particular, for example** or any similar expression shall be interpreted as illustrative and shall not limit the sense of the words preceding those terms.

## **2. EQUIPMENT HIRE**

- 2.1 The Abbey Theatre requires a fully completed and signed Order Form before agreeing to hire the Equipment to the Lessee.
- 2.2 The Abbey Theatre shall hire the Equipment to the Lessee at the Site, for the Lessee's use away from the Site, subject to the terms and conditions of this Statement of Terms and Conditions.
- 2.3 The Abbey Theatre shall not, other than in the exercise of its rights under the Agreement or applicable law, interfere with the Lessee's quiet possession of the Equipment.
- 2.4 The Agreement shall come into effect on the Commencement Date.
- 2.5 The Abbey Theatre shall make Handover of the Equipment to the Lessee at the Site on the Handover Date.
- 2.6 The Lessee must inspect the Equipment as soon as possible upon receipt of the Equipment.
- 2.7 In the case of missing Equipment on receipt of the Equipment, written notice must be provided to the Abbey Theatre by the Lessee, within two Business Days of receipt of the Equipment, specifying the shortage.
- 2.8 Replacement of the Equipment may be allowed on a case-by-case basis at the Abbey Theatre's sole discretion.
- 2.9 The Commencement Date and the Handover Date may or may not be the same date, depending on what has been agreed in each particular Order Form.
- 2.10 On signing the Order Form, the Lessee accepts this Statement of Terms and Conditions and it is expressly acknowledged that the signing of the Order Form for and on behalf of the Lessee and the Abbey Theatre constitutes the integration of the Order Form and this Statement of Terms and Conditions as a binding contract, which together constitute the Agreement.

## **3. RETURN OF EQUIPMENT**

- 3.1 The Lessee shall return the Equipment to the Site on the Return Date. Equipment cannot be returned by courier or post.
- 3.2 The Lessee agrees and acknowledges that it will adhere to its obligations as follows in relation to the return of the Equipment:

- 3.2.1 Prior to returning the Equipment to the Site, the Lessee shall ensure that all Equipment must be dry cleaned and returned in the same manner as the items left the Site on Handover. Proof of dry-cleaning receipt will be required;
- 3.2.2 The Equipment should not be hand washed or machine washed. If the Equipment needs to be machine washed for hygiene reasons during the Rental Period, please contact the Abbey Theatre's costume hire team who will provide you with assistance on this matter;
- 3.2.3 If the Equipment has not been used by the Lessee during the Rental Period, for whatever reason, the Lessee must still ensure that the Equipment is dry cleaned before the Return Date;
- 3.2.4 If the Equipment has been hired for fittings, there is no requirement to have the Equipment dry cleaned before the Return Date, unless the Equipment has been stained during fittings or in need of cleaning;
- 3.2.5 Cotton shirts and certain contemporary items may be professionally laundered and pressed, rather than dry cleaned;
- 3.2.6 Shoes can be cleaned with a cloth at the end of the hire.
- 3.2.7 Hats do not require dry cleaning unless the hats have been stained during the Rental Period.
- 3.2.8 Please check that all Equipment are completely dry before they are returned. The Equipment must be ready to be hired immediately after the return;
- 3.2.9 The Abbey Theatre offers a free week at the end of the Rental Period to facilitate dry cleaning of the Equipment. Please contact the Abbey Theatre's costume hire team who will provide you with information in relation to choosing an appropriate dry-cleaning service; and
- 3.2.10 If the Lessee is unable to dry clean the Equipment, the Lessee will notify the Abbey Theatre of this on return of the Equipment and the Abbey Theatre will dry clean the Equipment and shall be entitled to make a deduction from the Security Deposit to satisfy any costs associated with this.
- 3.3 For the avoidance of doubt, the Equipment shall not be returned to the Abbey Theatre's premises on Lower Abbey Street, Dublin 1, and shall only be deemed returned when returned to the Site. Notwithstanding this, should the Abbey Theatre choose to accept the return of Equipment at its premises on Lower Abbey Street, Dublin 1, it shall be entitled to charge a reasonable transportation fee to the Lessee in relation to transporting the Equipment back to the Site (which may include fees incurred in hiring a taxi or courier for this purpose).

#### **4. RENTAL PERIOD**

The Rental Period starts on the Handover Date and shall continue for the period set out in the Order Form unless and until the Agreement is terminated earlier in accordance with its terms.

#### **5. FEES AND DEPOSIT**

- 5.1 The Lessee shall pay the Fees to the Abbey Theatre in accordance with the Order Form. The Fees shall be paid in Euro only, and by credit card or debit card only.
- 5.2 The Fees are exclusive of VAT and any other applicable taxes and duties or similar charges which shall be payable by the Lessee at the rate and in the manner from time to time prescribed by law.

- 5.3 All amounts due under the Agreement shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).
- 5.4 If the Lessee fails to make a payment due to the Abbey Theatre under the Agreement by the due date, then, without limiting the Abbey Theatre's remedies under clause 15, the Abbey Theatre shall be entitled to charge interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this clause will accrue each day at 4% a year above the European Central Bank's base rate from time to time, but at 4% a year for any period when that base rate is below 0%.
- 5.5 The Lessee shall, on the Commencement Date or Handover Date (as may be agreed between them), pay the Security Deposit to the Abbey Theatre as set out in the Order Form. The Abbey Theatre also shall be entitled to hold the amount of the Security Deposit from the Lessee's credit or debit card during Rental Period. Disposable cards such as Revolut, cannot be used as the retaining card for the Security Deposit.
- 5.6 The Security Deposit is a deposit against default by the Lessee of payment of any Fees or any Total Loss or loss of, or damage caused to, the Equipment (in whole or in part) which goes beyond Wear and Tear and any costs incurred by the Abbey Theatre or Repair Fee relating thereto. If the Lessee fails to pay any Fees in accordance with the Order Form, or causes any Total Loss or any loss of, or damage caused to, the Equipment (in whole or in part) which goes beyond Wear and Tear, the Abbey Theatre shall be entitled, without further notice to the Lessee, to apply the Security Deposit against such Total Loss and, if required, to additionally impose an Excess Fee and/or a Repair Fee on the Lessee. The Security Deposit (or balance of the Security Deposit) shall be refundable within five (5) Business Days of the end of the Rental Period and once the Abbey Theatre has confirmed that the Equipment delivered to the Site by the Lessee on the Return Date is in satisfactory condition.
- 5.7 The Lessee acknowledges that the Fee shall constitute, where applicable:-
- 5.7.1 the Approval Fee;
- 5.7.2 the Initial Fee;
- 5.7.3 the Recurring Fee;
- 5.7.4 the Repair Fee;
- 5.7.5 the Late Fee; and/or
- 5.7.6 the Security Deposit.
- 5.8 The Lessee acknowledges that, at the discretion of the Abbey Theatre, the Abbey Theatre may choose to charge a Repair Fee in lieu of, or in addition to, making a deduction from the Security Deposit.

## **6. HANDOVER**

- 6.1 Handover shall be made by the Abbey Theatre to the Lessee at the Site. The Abbey Theatre shall use all reasonable endeavours to effect Handover by the Handover Date. Risk in the Equipment shall transfer in accordance with clause 7.2 of this Statement of Terms and Conditions.
- 6.2 The Lessee shall procure that a duly authorised representative of the Lessee with a Valid ID shall be present at the Handover. Acceptance of Handover by such representative shall constitute

conclusive evidence that the Lessee has examined the Equipment and has found it to be in good condition, complete and fit in every way for the purpose for which it is intended (save as regards any latent defects not reasonably apparent on inspection). The Lessee's duly authorised representative shall sign a receipt confirming such acceptance.

6.3 If the Lessee fails to accept Handover on the Handover Date, then, except where such failure is caused by the Abbey Theatre's failure to comply with its obligations under the Agreement:

6.3.1 the Equipment shall be deemed to have been delivered at 11.00am on the Handover Date and the Fees will be charged and Rental Period shall be deemed to have commenced; and

6.3.2 the Abbey Theatre shall store the Equipment until Handover takes place, and may charge the Lessee for all related costs and expenses (including insurance and the cost of restocking the Equipment).

6.4 The Abbey Theatre shall use all reasonable efforts to meet the stated date on the Order Form but shall not be liable, in contract, negligence or otherwise, for any loss or damage resulting from its failure to do so, howsoever caused.

## **7. TITLE, RISK AND INSURANCE**

7.1 The Equipment shall at all times remain the property of the Abbey Theatre, and the Lessee shall have no right, title or interest in or to the Equipment (save the right to possession and use of the Equipment subject to the terms and conditions of the Agreement).

7.2 The risk of loss, theft, damage or destruction of the Equipment shall pass to the Lessee on Handover. The Equipment shall remain at the sole risk of the Lessee during the Rental Period ("**Risk Period**") until such time as the Equipment is redelivered to the Abbey Theatre.

7.3 During the Risk Period, the Lessee shall, at its own expense, obtain and maintain all necessary insurances with a reputable insurer to cover any loss, theft or damage to the Equipment. The Lessee shall, on demand, supply copies of any relevant insurance policies or other insurance confirmation acceptable to the Abbey Theatre and proof of premium payment to the Abbey Theatre to confirm such insurance arrangements.

7.4 The Lessee shall give immediate written notice to the Abbey Theatre in the event of any loss, accident or damage to the Equipment arising out of or in connection with the Lessee's possession or use of the Equipment.

7.5 Should the Lessee or the Lessee's agents, employees or sub-contractors attend at the Site, they shall do so at their own risk and all obligations of the Abbey Theatre in relation to such attendance, whether pursuant to the Occupiers' Liability Act 1995 (as amended) or otherwise, are disclaimed to the fullest permitted extent of the law. Persons under the age of sixteen are not entitled to enter the Site at any time. Persons between the age of sixteen and under eighteen must be accompanied by a person who is eighteen or over when entering the Site.

## **8. SPECIFICATIONS**

8.1 Dimensions specified by the Abbey Theatre are to be treated as an approximate only unless the Lessee specifically states in writing that exact measurements are required. It is for the Lessee to decide if the dimensions are fit for purpose.



## **9. LESSEE'S RESPONSIBILITIES**

- 9.1 The Lessee shall during the term of the Agreement:
- 9.1.1 only use the Equipment for the Hire Purpose;
  - 9.1.2 not sub-lease, sub-hire or otherwise allow any third party to have access to the Equipment;
  - 9.1.3 not allow the Equipment to be used as "fancy dress";
  - 9.1.4 not allow fake/stage blood, blood squibs, other liquids, odours, stains or any other modifications or accessories to be used on the Equipment;
  - 9.1.5 ensure that the Equipment is kept and operated in a suitable environment, used only for the purposes for which it is designed, and operated in a proper manner by trained competent staff and, if operating instructions are provided by the Abbey Theatre, operated in accordance with any such operating instructions;
  - 9.1.6 take such steps (including compliance with all safety and usage instructions provided by the Abbey Theatre) as may be necessary to ensure, so far as is reasonably practicable, that the Equipment is at all times safe and without risk to health when it is being set, used, cleaned or maintained by a person at work;
  - 9.1.7 maintain at its own expense the Equipment in good and substantial repair in order to keep it in as good an operating condition as it was on the Handover Date (Wear and Tear only excepted) including replacement of worn, damaged and lost parts, and shall make good any damage to the Equipment;
  - 9.1.8 make no alteration to the Equipment and shall not remove any existing component (or components) from the Equipment without the prior written consent of the Abbey Theatre. Title in all substitutions, replacements, renewals made in or to the Equipment shall vest in the Abbey Theatre immediately on installation;
  - 9.1.9 keep the Abbey Theatre fully informed of all material matters relating to the Equipment;
  - 9.1.10 at all times keep the Equipment in the possession or control of the Lessee and keep the Abbey Theatre informed of its location;
  - 9.1.11 permit the Abbey Theatre or its duly authorised representative to inspect the Equipment at all reasonable times and for such purpose to enter on the Lessee's premises or any premises at which the Equipment may be located, and shall grant reasonable access and facilities for such inspection;
  - 9.1.12 maintain operating and maintenance records of the Equipment and make copies of such records readily available to the Abbey Theatre, together with such additional information as the Abbey Theatre may reasonably require;
  - 9.1.13 not, without the prior written consent of the Abbey Theatre, part with control of (including for the purposes of repair or maintenance), sell or offer for sale, underlet or lend the Equipment or allow the creation of any mortgage, charge, lien or other security interest in respect of it;
  - 9.1.14 not do or permit to be done any act or thing which will or may jeopardise the right, title or interest of the Abbey Theatre in the Equipment and, where the Equipment has become affixed to any land or building, the Lessee must take all necessary steps to ensure that the Abbey Theatre may enter such land or building and recover the Equipment both during the term of the

Agreement and for a reasonable period thereafter, including by procuring from any person having an interest in such land or building, a waiver in writing and in favour of the Abbey Theatre of any rights such person may have or acquire in the Equipment and a right for the Abbey Theatre to enter onto such land or building to remove the Equipment;

- 9.1.15 not suffer or permit the Equipment to be confiscated, seized or taken out of its possession or control under any distress, execution or other legal process, but if the Equipment is so confiscated, seized or taken, the Lessee shall notify the Abbey Theatre and the Lessee shall at its sole expense use its best endeavours to procure an immediate release of the Equipment and shall indemnify the Abbey Theatre on demand against all losses, costs, charges, damages and expenses reasonably incurred as a result of such confiscation;
- 9.1.16 not use the Equipment for any unlawful purpose or any purpose that may bring the Abbey Theatre into disrepute;
- 9.1.17 not use the Equipment for any commercial or non-commercial photography shoot unless this was previously disclosed to and approved in writing by the Abbey Theatre;
- 9.1.18 ensure that at all times the Equipment remains identifiable as being the Abbey Theatre's property and wherever possible shall ensure that a visible sign to that effect is attached to the Equipment; and
- 9.1.19 deliver up the Equipment at the end of the Rental Period at the Site, or if necessary allow the Abbey Theatre or its representatives access to the Lessee's premises or any premises where the Equipment is located for the purpose of removing the Equipment.
- 9.2 The Lessee acknowledges that all Intellectual Property Rights in the Equipment will shall remain at all times with the Abbey Theatre. The Lessee shall not in any way, without prior written approval, make use of any trademarks owned by the Abbey Theatre.
- 9.3 The Lessee acknowledges that the Abbey Theatre shall not be responsible for any loss of or damage to the Equipment arising out of or in connection with any negligence, misuse, mishandling of the Equipment or otherwise caused by the Lessee or its officers, employees, agents and contractors, and the Lessee shall indemnify the Abbey Theatre in full against all liabilities, costs, expenses, damages and losses (including 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 reasonable professional costs and expenses) suffered or incurred by the Abbey Theatre arising out of, or in connection with any failure by the Lessee to comply with its obligations in this clause 9.

## **10. MARKING AND INSTRUCTIONS**

- 10.1 No name, label, mark, numbering, colouring, appearance, or log on the Equipment or packaging will be obscured, removed or concealed by the Lessee.
- 10.2 The Lessee will not repackage or alter the presentation of the Equipment and it will not assist, cause or enable any other third party to do any of the said acts or deal in Equipment or packaging which have been subject to any of the said acts.

## **11. NO PURCHASE OPTION**

- 11.1 The Lessee shall not have an option to purchase the Equipment pursuant to the Agreement and any such a proposal, if agreed in principle by the Abbey Theatre, will be subject to a bespoke equipment purchase agreement.

## **12. WARRANTY**

- 12.1 The Abbey Theatre warrants that the Equipment shall substantially conform to its specification (as made available by the Abbey Theatre), be of satisfactory quality and fit for any purpose held out by the Abbey Theatre. The Abbey Theatre shall use all reasonable endeavours to remedy, free of charge, any material defect in the Equipment which manifests itself within five Business Days from Handover, provided that:
- 12.1.1 the Lessee notifies the Abbey Theatre of any defect in writing within two Business Days of the defect occurring or of becoming aware of the defect;
  - 12.1.2 the Abbey Theatre is permitted to make a full examination of the alleged defect, upon the Lessee's presentation of the Equipment in question at the Site;
  - 12.1.3 the defect did not materialise as a result of misuse, neglect, alteration, mishandling or unauthorised manipulation by any person other than the Abbey Theatre's authorised personnel;
  - 12.1.4 the defect did not arise out of any information, design or any other assistance supplied or furnished by the Lessee or on its behalf; and
  - 12.1.5 the defect is directly attributable to defective material, workmanship or design.
- 12.2 Insofar as the Equipment comprises or contains equipment or components which were not manufactured or produced by the Abbey Theatre, the Lessee shall be entitled only to such warranty or other benefit as the Abbey Theatre has received from the manufacturer.
- 12.3 If the Abbey Theatre fails to remedy any material defect in the Equipment in accordance with clause 12.1, the Abbey Theatre shall, at the Lessee's request, accept the return of part or all of the Equipment and make an appropriate reduction to the Fees payable during the remaining term of the Agreement and, if relevant, return the Security Deposit (or any part of it).
- 12.4 The Abbey Theatre shall be under no contractual obligation to provide the Lessee with a repayment or reduction on the Fee if the Lessee returns non-defective Equipment during the Rental Period and before the Return Date.

## **13. LIMITATION OF LIABILITY**

- 13.1 The limits and exclusions in this clause reflect the insurance cover the Abbey Theatre has been able to arrange and the Lessee is responsible for making its own arrangements for the insurance of any excess liability.
- 13.2 References to liability in this clause 13 include every kind of liability arising under or in connection with the Agreement including liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.
- 13.3 Nothing in the Agreement limits any liability which cannot legally be limited including liability for:
- 13.3.1 death or personal injury caused by negligence;
  - 13.3.2 fraud or fraudulent misrepresentation; and
  - 13.3.3 breach of the terms implied by the Sale of Goods and Supply of Services Act 1980 and the Sale of Goods Act 1893.

- 13.4 Subject to clause 13.3, the Abbey Theatre's total liability to the Lessee shall not exceed the total Fees payable for the Rental Period as set out in the Order Form.
- 13.5 Subject to clause 13.3, the Abbey Theatre shall not be liable under the Agreement for any:
- 13.5.1 loss of profits;
  - 13.5.2 loss of sales or business opportunity;
  - 13.5.3 loss of agreements or contracts;
  - 13.5.4 loss of anticipated savings;
  - 13.5.5 loss of use or corruption of software, data or information;
  - 13.5.6 damage to property;
  - 13.5.7 cost of mitigation arising out of or occasioned by any fault or defect in the Equipment;
  - 13.5.8 loss of or damage to goodwill; and
  - 13.5.9 indirect or consequential loss.
- 13.6 Subject to clause 13.3, all implied terms and conditions as to the quality or performance of the Equipment and any other goods or services provided under the Agreement are, to the fullest extent permitted by law, excluded from the Agreement.

#### **14. INDEMNIFICATION**

- 14.1 In consideration of the supply of the Equipment having occurred and in consideration of the applicable Fees and for other good and valuable consideration the sufficiency of which is hereby acknowledged by the Lessee and the Abbey Theatre, the Lessee hereby agrees to indemnify, defend and hold harmless the Abbey Theatre for and against any and all claims by a third party arising out of or relating to the supply of the Equipment, 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 professional and legal costs), the negligence, fraud or wilful deceit of the Lessee in performance of its obligations hereunder and as may be otherwise agreed from time to time and any breach of the obligations of the Lessee hereunder.

#### **15. TERMINATION**

- 15.1 Without affecting any other right or remedy available to it, the Abbey Theatre may terminate the Agreement with immediate effect by giving written notice to the Lessee if:
- 15.1.1 the Lessee fails to pay any amount due under the Agreement on the due date for payment and remains in default not less than five (5) Business Days after being notified in writing to make such payment;
  - 15.1.2 the Lessee commits a material breach of any other term of the Agreement which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of five Business Days after being notified in writing to do so;
  - 15.1.3 the Lessee repeatedly breaches any of the terms of the Agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of the Agreement;

- 15.1.4 the Lessee has provided false information on the Order Form prior to the Handover;
- 15.1.5 the Lessee 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 509 of the Companies Act 2014;
- 15.1.6 the Lessee commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than (being a company) for the sole purpose of a scheme for a solvent amalgamation of the Lessee with one or more other companies or the solvent reconstruction of the Lessee;
- 15.1.7 a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Lessee (being a company, limited liability partnership or partnership) other than for the sole purpose of a scheme for a solvent amalgamation of the Lessee with one or more other companies or the solvent reconstruction of the Lessee;
- 15.1.8 an application is made to court, or an order is made, for the appointment of an administrator or examiner, or a notice of intention to appoint an administrator or examiner is given or an administrator or examiner is appointed, over the Lessee (being a company);
- 15.1.9 the holder of a qualifying floating charge over the assets of the Lessee (being a company) has become entitled to appoint or has appointed a receiver;
- 15.1.10 a person becomes entitled to appoint a receiver over all or any of the assets of the Lessee or a receiver is appointed over all or any of the assets of the Lessee;
- 15.1.11 a creditor or encumbrancer of the Lessee attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the Lessee's assets and such attachment or process is not discharged within ten (10) Business Days;
- 15.1.12 any event occurs, or proceeding is taken, with respect to the Lessee in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 15.1.5 to clause 15.1.11 (inclusive);
- 15.1.13 the Lessee's financial position deteriorates so far as to reasonably justify the Abbey Theatre's opinion that the Lessee's ability to give effect to the terms of the Agreement is in jeopardy;
- 15.1.14 the Lessee suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business; or
- 15.1.15 there is, in the opinion of the Abbey Theatre, a change of control of the Lessee.
- 15.2 For the purposes of clause 15.1.2, a **material breach** means:
- 15.2.1 a breach that has a serious effect on the benefit the Abbey Theatre would otherwise derive from the Agreement during its term.
- 15.3 The Agreement shall automatically terminate if a Total Loss occurs in relation to the Equipment.
- 16. CONSEQUENCES OF TERMINATION OR EXPIRY**
- 16.1 On expiry or termination of the Agreement, however caused:

- 16.1.1 the Abbey Theatre's consent to the Lessee's possession of the Equipment shall terminate;
- 16.1.2 the Abbey Theatre may, by its authorised representatives, without notice and at the Lessee's expense, retake possession of the Equipment and for this purpose may enter the Lessee's premises or any premises at which the Equipment is located;
- 16.1.3 the Lessee shall ensure the safe and proper storage of the Equipment until it has been collected by the Abbey Theatre; and
- 16.1.4 without prejudice to any other rights or remedies of the Lessee, the Lessee shall pay to the Abbey Theatre on demand:
- (a) all Fees and other sums due but unpaid at the date of such demand together with any interest accrued pursuant to clause 5.4; and
  - (b) any costs and expenses incurred by the Abbey Theatre in recovering the Equipment or in collecting any sums due under the Agreement (including any storage, insurance, repair, transport, legal and remarketing costs).
- 16.2 On termination of the Agreement pursuant to clause 15.1, any other repudiation of the Agreement by the Lessee which is accepted by the Abbey Theatre or pursuant to clause 15.3, without prejudice to any other rights or remedies of the Abbey Theatre, the Lessee shall pay to the Abbey Theatre on demand a sum equal to the whole of the Fees that would (but for the termination) have been payable if the Agreement had continued from the date of such demand to the end of the Rental Period, less the Abbey Theatre's reasonable assessment of the market value of the Equipment on sale.
- 16.3 The sums payable pursuant to clause 16.2 shall be agreed compensation for the Abbey Theatre's loss and shall be payable in addition to the sums payable pursuant to clause 16.1.4. Such sums may be partly or wholly recovered from any Security Deposit.
- 16.4 Any provision of the Agreement that expressly or by implication is intended to come into or continue in force on or after termination or expiry of the Agreement shall remain in full force and effect.
- 16.5 Termination or expiry of the Agreement shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the Agreement which existed at or before the date of termination or expiry.

## 17. **CANCELLATION POLICY**

- 17.1 The Abbey Theatre shall not be obliged to agree to any request for a cancellation or modification of a signed Order Form received from the Lessee, and any such agreement regarding cancellation or modification shall be at the sole discretion of the Abbey Theatre.

## 18. **FORCE MAJEURE**

- 18.1 Neither party shall be in breach of the Agreement or otherwise liable for any failure or delay in the performance of its obligations if such delay or failure results from events, circumstances or causes beyond its reasonable control. The time for performance of such obligations shall be extended accordingly. If the period of delay or non-performance continues for twenty Business Days, the party not affected may terminate the Agreement by giving five Business Days' written notice to the affected party.

## **19. CONFIDENTIAL INFORMATION**

- 19.1 Each party undertakes that it shall not at any time during the Agreement, and for a period of two years after termination or expiry of the Agreement, disclose to any person any confidential information concerning the business, assets, affairs, customers, clients or suppliers of the other party or of any member of the group of companies to which the other party belongs, except as permitted by clause 19.2.
- 19.2 Each party may disclose the other party's confidential information:
- 19.2.1 to its employees, officers, representatives, contractors, subcontractors or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under or in connection with the Agreement. Each party shall ensure that its employees, officers, representatives, contractors, subcontractors or advisers to whom it discloses the other party's confidential information comply with clause 19; and
- 19.2.2 as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- 19.3 Neither party shall use the other party's confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with the Agreement.
- 19.4 Each party undertakes that it shall comply with its respective obligations pursuant to the Data Protection Laws.

## **20. ASSIGNMENT AND OTHER DEALINGS**

- 20.1 The Lessee shall not assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any of its rights and obligations under the Agreement.

## **21. ENTIRE AGREEMENT**

- 21.1 The Agreement (comprising the Order Form and this Statement of Terms and Conditions) constitutes the entire agreement between the parties.
- 21.2 Each party acknowledges that in entering into the Agreement it does not rely on any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Agreement. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in the Agreement.

## **22. VARIATION**

No variation of the Agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

## **23. NO PARTNERSHIP OR AGENCY**

- 23.1 Nothing in the Agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, or authorise any party to make or enter into any commitments for or on behalf of any other party.
- 23.2 Each party confirms it is acting on its own behalf and not for the benefit of any other person.

## **24. FURTHER ASSURANCE**

24.1 Each party shall promptly and at its own expense execute and deliver all such documents, and do (or procure, insofar as is within their respective powers to do so, that others including the Abbey Theatre do) all such things, as the other party may from time to time reasonably require for the purpose of giving full effect to the provisions of these Statement of Terms and Conditions.

## **25. COUNTERPARTS**

25.1 The Order Form may be executed in any number of counterparts, each of which shall constitute a duplicate original, but all the counterparts shall together constitute the one Order Form, with signing of the Order Form constituting the agreement of the Abbey Theatre and the Lessee to this Statement of Terms and Conditions.

25.2 Transmission of an executed counterpart of the Order Form or the executed signature page to the extent and as provided for under any applicable laws, including the Electronic Commerce Act 2000 and eIDAS of a counterpart of the Order Form by email (in PDF, JPEG or other agreed format) shall take effect as the transmission of an executed “wet-ink” counterpart of the Order Form. If either method of transmission is adopted, without prejudice to the validity of the Agreement thus made, each party shall on request provide the other with the “wet ink” hard copy originals of their counterpart.

25.3 No counterpart shall be effective until each party has provided to the other at least one executed counterpart.

## **26. NOTICES**

26.1 Any notice given to a party under or in connection with the Agreement shall be in writing and shall be:

26.1.1 delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or

26.1.2 sent by email to the following addresses (or an address substituted in writing by the party to be served):

(a) The Abbey Theatre: [costume.hire@abbeytheatre.ie](mailto:costume.hire@abbeytheatre.ie)

(b) Lessee: the email address set out in the Order Form or otherwise used by the Lessee in its communications with the Abbey Theatre.

26.2 Any notice shall be deemed to have been received:

26.2.1 if delivered by hand, at the time the notice is left at the proper address;

26.2.2 if sent by post, at 9.00am on the second (2) Business Day after posting; or

26.2.3 if sent by email, at the time of transmission, or, if this time falls outside Business Hours in the place of receipt, when Business Hours resume.

26.3 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.



**27. WAIVER**

27.1 A waiver of any right or remedy is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy.

27.2 A delay or failure to exercise, or the single or partial exercise of, any right or remedy shall not waive that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy.

**28. RIGHTS AND REMEDIES**

Except as expressly provided in the Agreement, the rights and remedies provided under the Agreement are in addition to, and not exclusive of, any rights or remedies provided by common law or under statute.

**29. SEVERANCE**

29.1 If any provision or part-provision of the Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of the Agreement.

29.2 If any provision or part-provision of the Agreement is deemed deleted under clause 29.1, the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.

**30. GOVERNING LAW**

The Agreement and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of Ireland.

**31. JURISDICTION**

Each party irrevocably agrees that the courts of Ireland shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Agreement or its subject matter or formation.