License No.

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# FACILITY USE AGREEMENT

## TED MANN CONCERT HALL

 **THIS FACILITY USE AGREEMENT** (the “**Agreement**”) is entered into effective as of      , by and between Regents of the University of Minnesota (“**University**”), a Minnesota constitutional corporation, and       (“**Licensee**”), a      . This Agreement is entered into by University through the Ted Mann Concert Hall.

**1.** **Grant of License.** University grants to Licensee a license to use Ted Mann Concert Hall (the “**Facility**”) solely for the following purpose(s):

      (the “**Event**”)

The estimated number of people expected to attend the Event is       (     ). Licensee acknowledges and agrees that University, its agents, employees, invitees, licensees and students may use any portion of the Facility for any purpose whatsoever and at any time during the term of this Agreement, provided that such use shall not unreasonably disturb Licensee’s use of the Facility as provided in this Agreement.

 Licensee shall use the Facility in accordance with the terms and conditions of this Agreement, all University policies and rules, including the Safety of Minors policy, if applicable, and all federal, state and local laws, ordinances, rules and regulations. In addition, Licensee agrees to use the Facility in accordance with all guidance published by the Centers for Disease Control and Prevention (**CDC**), the Minnesota Department of Health (**MDH**), and University related to the safe use of the Facility for the Event. The foregoing specifically includes, but is not limited to, all CDC, MDH and University guidance related to COVID-19.

**2.** **Term.** Licensee is permitted to use the Facility only during the following dates and times:

Performance Dates:

Access:

Load in:

Performance Time(s):

Any additional services provided by University will be included on a Request for Services (“**RFS**”) form found at z.umn.edu/TMCHExternalRFS.

Licensee’s use of the Facility pursuant to this Agreement will not exceed 50 separate calendar days.

**3.** **Fee.** In addition to any other payment Licensee is required to make pursuant to this Agreement, Licensee shall pay University the fees as described on the attached Exhibit A before Licensee may use the Facility (the “**Total Fees**”).

**4. Utilities and Services.** University shall provide maintenance and services to the Facility in accordance with its routine schedule and standards for the building of which the Facility is a part. Licensee shall reimburse University for all additional maintenance and services provided at Licensee’s request.

**5.** **Concessions/Novelties; Food; Beverage.**

 5.1 Licensee shall not sell any concessions or novelties in the Facility or on any University property without an executed Sales Permit issued by University, which Permit University may grant or withhold in its sole discretion.

 5.2 Food may be served in the Facility only with the permission of University, and, if required by University, a permit from University’s Department of Environmental Health and Safety.

 5.3 Licensee shall not sell, distribute, dispense, advertise or promote any non-alcoholic beverage (or permit any other to do the same) without University’s written consent, which consent University may condition, grant or withhold in its sole discretion.

 5.4 Licensee and/or its caterer may not serve or sell alcoholic beverages at the Facility, unless Licensee receives authorization from University containing such terms and conditions as University, in its sole discretion, deems advisable. Such authorization may be granted or withheld at University’s sole discretion. Upon granting of such permit, Licensee shall provide University with evidence satisfactory to University in University’s sole discretion that Licensee is covered by adequate insurance, including, but not limited to, host liquor liability insurance.

**6.** **Alterations; Signs; Liens.** Licensee shall not redecorate, change or alter the Facility, nor shall Licensee display any signs or advertising on or within the Facility, without the prior written consent of University, which consent University may grant or withhold in its sole discretion. Licensee shall not permit to accrue, and shall indemnify University against and hold University harmless from, any liens for labor or materials provided to Licensee, or claimed to have been so provided.

**7.** **Personal Property.** Licensee, not University, is responsible for loss of or damage to any personal property of Licensee, its guests, agents, employees or invitees, located within the Facility or on University property, before, during or after the term of the License.

**8.** **Indemnification.** To the extent permitted by law, Licensee releases and agrees to defend (with counsel reasonably acceptable to University), indemnify, and hold harmless University from and against all claims, actions, damages, judgments, fines, liabilities, and expenses (including attorney’s and other professional fees) arising from or in connection with Licensee’s use of the Facility and other University property; the acts and omissions of Licensee’s employees, agents, vendors, contractors, or invitees; or Licensee’s failure to perform or comply with any of the covenants, agreements, terms, provisions, conditions, or limitations contained in this Agreement.

**9. Insurance.** At least thirty (30) days prior to the commencement of the term of this License, Licensee shall provide University with a certificate of insurance or other acceptable evidence of insurance coverage as indicated below. If this Agreement is signed by Licensee fewer than thirty (30) days prior to the Event, Licensee shall submit such evidence of insurance upon the signing of this Agreement.

 9.1 Check either (A) or (B) or (C) below:

 [ ]  (A) Licensee’s policy of Commercial General Liability Insurance with a minimum limit of $1,000,000 per occurrence or qualified self-insurance subject to approval by University;

 [ ]  (B) Proof that Licensee has purchased event liability insurance with a minimum limit of $1,000,000 per occurrence. Licensee may purchase such insurance from the insurer of its choice, or at the following website address: [https://tulip.ajgrms.com](https://tulip.ajgrms.com/).

 [ ]  (C) State and other governmental agencies that are self-insured shall provide a letter stating that fact and the coverage limits for such insurance on departmental letterhead.

9.2 Workers’ Compensation/Employers Liability, if applicable, to the extent required by law.

 9.3 All insurance provided under paragraphs 9.1(A) and 9.1(B) shall be written by insurance companies with an A.M. Best rating of A-VII or better and licensed and authorized to do business in the State of Minnesota and shall name Regents of the University of Minnesota as an additional insured. Licensee shall provide written notice to University if any of the required insurance coverage is canceled, modified or non-renewed before the end of the term of this Agreement. Licensee shall maintain the insurance(s) described in this paragraph for the entire term of this Agreement.

**10.** **Assignment.** Licensee shall not assign its rights under this Agreement without University’s prior written consent, which consent University may grant or withhold in its sole discretion.

**11.** **Obligations at End of Agreement.** Licensee shall, upon the expiration or earlier termination of this Agreement, cease use of the Facility and leave it in the same good condition as on the initial date of possession by Licensee, normal wear and tear excepted. Property not removed by Licensee will be considered abandoned, and University may dispose of it as it deems expedient without liability to Licensee or others. Licensee shall reimburse University for any and all costs University incurs to repair any damage to the Facility or other University property or equipment arising out of or connected with the Event, unless such damage is caused solely by University, its officers, employees, agents or representatives.

**12. Notices.** All notices required by this Agreement shall be in writing and shall be delivered personally or by certified mail, return receipt requested, or by facsimile or electronic mail (provided such delivery is confirmed), or by a recognized overnight courier service to the parties at the following addresses: To University at Ted Mann Concert Hall, School of Music, 2106 4th Street South, Minneapolis, MN 55455, mille149@umn.edu; and to Licensee at      . If Licensee is providing University with a notice, Licensee shall also deliver a copy of such notice to University’s Real Estate Office at 424 Donhowe Building, 319 – 15th Avenue S.E., Minneapolis, MN 55455-0199 (c/o Director of Real Estate), reo@umn.edu.

**13. License Only; Remedies.** Licensee acknowledges that this Agreement represents a grant of a revocable license only, and not an easement or lease. Licensee shall pay to University all of University’s damages, costs and fees, including attorneys’ fees, caused by Licensee’s failure to comply with the terms and conditions of this Agreement. In addition, if Licensee fails to comply with the terms and conditions of this Agreement, University shall be entitled to exercise all other legal and equitable remedies available to University.

**14. Limitation of University Liability.** IN NO EVENT SHALL UNIVERSITY BE LIABLE FOR ANY INDIRECT, CONSEQUENTIAL, INCIDENTAL, LOST PROFITS OR LIKE EXPECTANCY DAMAGES ARISING OUT OF THE AGREEMENT. University’s total liability for a breach of this Agreement are the feeS payable by LICENSEE as set forth in PARAGRAPH 3 OR IN AN EXHIBIT TO THIS AGREEMENT.

**15.** **Cancellation Due to Uncontrollable Event.** The Event may be canceled by either party if an Uncontrollable Event makes it impracticable or inadvisable to conduct the Event. An “**Uncontrollable Event**” means an event or circumstance that is beyond the reasonable control and without the fault of the party impacted. An Uncontrollable Event may include, but is not limited to, an act of God; civil disorder; terrorist acts or threats; acts of governing authorities; fires, floods, and other natural disasters; strikes or other labor difficulties; public health issues or disease; facility closings or operation disruptions due to severe weather, a failure or disruption of utilities or critical equipment, an active shooter, or other emergencies; or other events, whether similar or dissimilar to the foregoing. For clarity, an Uncontrollable Event will include the COVID-19 pandemic and related circumstances, whether or not foreseeable (including, without limitation, ongoing or new quarantine orders; employee travel or other restrictions; University campus closure or policy changes; or federal, state, or local governmental orders or advisories). If the Event is cancelled due to an Uncontrollable Event, neither party shall have any liability to the other, provided that any deposits or amounts paid by one party to the other shall be promptly refunded and Licensee shall reimburse University for all reasonable expenses incurred to the time of cancellation (including any expenses for which University then is and will remain unavoidably committed).

**16. Use of University Name or Logo.** Licensee agrees not to use the name, logo, or any other marks (including, but not limited to, colors and music) owned by or associated with University or the name of any representative of University without the written permission of University in each instance except for the limited purpose of identifying the location of the Event in advertising or other notices for the Event.

 16.1 Licensee shall not use or alter University Marks in connection with the Event. Licensee agrees that the following disclaimer shall be prominently placed in all material related to promotion, publicity or advertising of the Event, whether print media, photo, video or web-based, in a font not smaller than the main text of the specific piece:

“The University of Minnesota is not endorsing or sponsoring the activities conducted by       on the University of Minnesota campus. The relationship between the University of Minnesota and       is solely that of licensor and licensee.”

 16.2 Licensee’s failure to comply with this section shall give University the right to immediately terminate this Agreement and Licensee’s access to the Facilities.

**17. Copyright Representation and Release**. Licensee represents that copies of presentation materials Licensee provides to University, or directs University to copy and distribute to Attendees, and materials that Licensee will present by multimedia at the Event, will only be made from legal copies and that Licensee has the right to make this use of the presentation materials either because the Licensee a) owns the copyright, b) has written permission of the copyright owner(s) for this use, c) reasonably believes each use to be fair use pursuant to 17 United State Code § 107, *Limitations on exclusive rights: Fair use* or d) reasonably believes the material to be in the public domain. Licensee further represents that copyright notices have not been altered and that required attributions are shown. Licensee releases and will hold harmless University, its Regents, officers, employees and agents for copyright infringement arising from Licensee’s presentation materials.

**18. Amendments.** This Agreement shall be amended only in a writing duly executed by all the parties to this Agreement.

**19. Non-Waiver; Survival.** No waiver by any party of a default or non-performance by the other party shall be deemed a waiver of any subsequent default or non-performance. Licensee’s obligations under Sections 6, 8, 11, 15, and 17 and University’s limitation of liability under Section 14 shall survive the expiration or earlier termination of this Agreement.

**20. Governing Law; Forum.** The laws of the state of Minnesota shall govern the validity, construction and enforceability of this Agreement. All suits, actions, claims and causes of action relating to the construction, validity, performance and enforcement of this Agreement shall be brought in the state courts of Minnesota.

**21. Entire Agreement.** This Agreement (including all exhibits, if any) is intended by the parties as the final and binding expression of their agreement and as the complete and exclusive statement of its terms. This Agreement supersedes all prior negotiations, representations and agreements between the parties, whether oral or written, relating to the subject matter of this Agreement.

**22. Counterparts; Electronic Signatures.** This Agreement may be executed in counterparts and by electronic signature, each counterpart of which will be deemed an original, and all of which together will constitute one agreement.  The executed counterparts of this Agreement may be delivered by electronic means, such as email or facsimile, and the receiving party may rely on the receipt of such executed counterpart as if the original had been received.

**23. Exhibits.** The terms and conditions of Exhibit A attached to this Agreement are made a part of this Agreement as if fully set forth in this Agreement. To the extent that any of the terms and conditions of paragraphs 1 – 23 of this Agreement conflict with any of the terms and conditions of the attached Exhibit, the terms and conditions of the Exhibit shall control. All capitalized terms in any Exhibit that are not specifically defined in such Exhibit shall have the meanings given them in this Agreement.

 **IN WITNESS WHEREOF**, University and Licensee have executed this Agreement as of the date set forth above.

**Regents of the University of Minnesota**

By: By:

Name:       Name:

Title:       Title:

Date: Date:

**EXHIBIT A**

## TO FACILITY USE AGREEMENT

## TED MANN CONCERT HALL

 University and Licensee further agree as follows:

**1.** **Definitions**. For purposes of this Agreement, the following terms shall have the following meanings:

 1.1 “**Business Office**” means the Facility’s business office located at 200 Ferguson Hall, 2106 Fourth Street South, Minneapolis, Minnesota 55455;

 1.2 “**Concessions**” means, collectively, all t-shirts, programs, food, beverages and other concessions or novelties of whatever kind or nature sold in connection with the Event.

 1.3 “**Deposit**” means the nonrefundable deposit paid by Licensee contemporaneously with its execution of this Agreement in the amount of       and no/100 Dollars ($     ).

 1.4 “**Event Costs**” means, collectively, the Use Fee, the Presentation Expenses, the Insurance Fee, and any and all other costs and expenses University incurs in connection with the Event.

 1.5 “**Estimate**” means University’s written estimate of all Event Costs.

 1.6 “**Facility Restoration Fee**” means the one and 50/100 Dollars ($1.50) per ticket fee for each ticket sold for the Event.

 1.7 “**House Seats**” means twelve (12) seats located in one of the two seating areas listed below, or other seats located in the Facility as mutually agreed to by the parties, for use by University all in University’s sole discretion.

Tier 1 Row C, Seats 1-8 and Tier 1 Left box D (4 seats)

 1.8 “**Net Ticket Sales**” means the total proceeds collected by University from University’s sale of tickets for the Event, less city and state taxes payable with respect to the sale of such tickets.

 1.9 “**Presentation Expenses**” means any and all costs and expenses University incurs to provide the equipment, services and personnel for the Event as described in Section 2.3 below.

 1.10 “**University’s Collected Amounts**” means the sum of the Deposit, the estimated Event Costs collected by University pursuant to Section 3.1 below and Net Ticket Sales collected by University.

 1.11 “**Use Fee**” means a fee for the use of the Facility according to the rate schedule found at <https://z.umn.edu/tmch>. A printed copy is available upon request. The Use Fee for this Event is and no/100 dollars ($     ) per day and does not include the other Event Costs defined in Section 1.4 above.

 1.12 “**Cancellation Fee**” means the fee paid to University in the event of a cancellation by Licensee pursuant to Section 4 below.

**2. University’s Obligations.** University shall, in addition to its other obligations as described in this Agreement, if any:

 2.1 Maintain the Facility and provide utility services respecting the Facility in accordance with University’s custom and practice for the Facility.

 2.2 Provide, for Licensee’s use during the Event, all permanent equipment and available dressing rooms in the Facility.

 2.3 Provide the house and stage manager for the Event and any and all backstage help, special police, ushers, ticket sellers, ticket takers, inside hall security, and any other special services or equipment for the Event, which University, in its sole discretion, determines, are necessary.

**3. Licensee’s Obligations.** Licensee covenants and agrees, in addition to performing its other obligations as described in this Agreement, to:

 3.1 Pay in full all Event Costs as follows:

 3.1.1 University shall provide Licensee with the Estimate of the Total Fees at least       (     ) days prior to the Event.

 3.1.2 Licensee shall pay University in cash or certified funds at the Business Office, either:

 (University to check one)

 [ ]        percent (   %) of the Estimate provided by University at least       (     ) days prior to the Event (the “**Prepaid Amount**”). The actual amount, according to University invoice, is due within       (     ) days following date of invoice, or

 [ ]  the total amount due according to University invoice within       (     ) days following date of invoice.

 3.1.3 University, through its University of Minnesota Ticketing and Events (UMTE), shall have the right to sell tickets for the Event.. University shall pay to Licensee, within a reasonable time after the conclusion of the Event, but in no event before payment is made by Licensee under Section 3.1.2, the difference between University’s Collected Amounts and actual Event Costs. Upon Licensee’s written request, University shall provide Licensee with a written statement of actual Event Costs.

 3.1.4 Licensee shall pay to University the Facility Restoration Fee when tickets to the Event are sold by Licensee or a third party ticketing vendor on behalf of Licensee.

 3.2. Comply with all University rules and regulations, including, but not limited to, University rules and regulations governing the sale of Concessions. Licensee agrees to pay to University within       (     ) days after the conclusion of the Event, in addition to Event Costs,       percent (   %) of the gross proceeds less applicable sales tax collected by Licensee resulting from the sale of such Concessions. Licensee and University shall determine gross proceeds by inventory counts prior to and following the Event. Licensee agrees that it will be responsible for collecting and paying sales tax on all items subject to sales tax in accordance with Minnesota law.

 3.3. Provide University with a complete list of equipment and stage needs with an RSF form found at z.umn.edu/TMCHExternalRFS at least thirty (30) days prior to the commencement of the Event.

 3.4. Provide University with the House Seats.

 3.5. Pay all additional musicians required by any local musicians’ union for the Event.

 3.6. Pay all state and local taxes which may be levied with respect to the Event.

 3.7. Ensure that only performers and organizational staff use the stage and stage wings of the Facility.

 3.8. If requested by University, position representatives near the stage steps in the Facility before and after each performance to prevent unauthorized access to the stage area.

 3.9. If the Event is canceled for any reason other than an Uncontrollable Event, pay University the greater of the total Presentation Expenses or the Cancellation Fee. If the sum of the Deposit and Prepaid Amount is less than the Cancellation Fee or the Presentation Expenses, whichever is greater, Licensee shall pay the difference in cash to University on demand. If the Event is cancelled for reason of Uncontrollable Event, pay University the Event Costs incurred to the time of cancellation (including any Event Costs for which University then is and will unavoidably remain committed).

**4. Cancellation Fee.** A notice of cancellation must be in writing and addressed to University at its Business Office as defined above. An event will be deemed canceled on the date of receipt of such notice by University. Licensee agrees that in the event of such cancellation, the actual damages incurred would be difficult to determine. Therefore, Licensee agrees to pay to University as liquidated damages a Cancellation Fee according to the following schedule:

 Notice of Cancellation Received Cancellation Fee

 91-120 days prior to Event 50% of Use Fee

 61-90 days prior to Event 75% of Use Fee

 Less than 61 days before Event 100% of Use Fee

Licensee may cancel at least four (4) months before the Event without penalty.