License No.



**FACILITY USE AGREEMENT**

**NORTHROP**

 **THIS FACILITY USE AGREEMENT** (“**Agreement**”) is entered into effective as of       by and between the Regents of University of Minnesota, a Minnesota constitutional corporation (“**University**”), and      , a       (“**Licensee**”). This Agreement is entered into by University through its Department of Concerts and Lectures.

# 1. Grant of License. University grants to Licensee a non-exclusive license to use space(s), as defined in Section 2 below, at Northrop, located on University’s Minneapolis campus at 84 Church Street SE, Minneapolis, Minnesota (the “Venue”) for the sole purpose of conducting the event described in Section 2. Licensee’s use of the Venue pursuant to this Agreement will not exceed 50 separate calendar days.

**2. The Event.** Licensee shall present the following Event in the Venue:

 2.1 Date(s) of Event:

 2.2 Type of Event:

 2.3 Event Title:

 2.4 Artist(s) Name:

 2.5 Time(s) of Event:

 2.6 Use of Space(s):

 2.7 Load-in Dates/Times:

 2.8 Load-out Dates/Times:

 2.9 Doors Open At:

 2.10 Ticket Prices:

 2.11 Estimated Attendance:

**3. The Parties.** The parties’ contract administrators for purposes of this Agreement are:

For Licensee:

Attn:

Telephone:

Email Address:

Website:

For University: University of Minnesota-Northrop

Attn: Kari Schloner, Executive Director of Northrop

84 Church Street SE, Suite 90

Minneapolis, MN 55455

Telephone: (612) 625-0796

Email: kschlone@umn.edu

4. Use of the Venue. Licensee is taking the Venue in “AS IS” condition. It is Licensee’s duty to investigate the needs of the Artist(s) to determine whether the Venue is fit for this Event. University has the right to control and manage the Venue and to enforce all reasonable rules for the management and use of the Venue. Licensee, the Artist(s), and their employees, agents and guests shall use the Venue in accordance with the terms and conditions of this Agreement, all University policies, rules and regulations related to University property, and all federal, state, and local laws, ordinances, rules and regulations (including copyright or similar laws).In addition, Licensee agrees to use the Venue 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 Venue for the Event. The foregoing specifically includes, but is not limited to, all CDC, MDH and University guidance related to COVID-19.

# University, its regents, agents, employees, invitees, licensees and students may use any portion of the Venue for any purpose whatsoever and at any time during the term of this Agreement, provided that University does not unreasonably disturb Licensee’s use of the Venue as permitted herein.

**5. Utilities and Services.**

 5.1 University shall provide the Venue furnished, heated, lighted, clean and in good working order and with all permanent equipment and dressing rooms. University agrees to provide maintenance and operational services to the Venue in accordance with its routine schedule for the Venue. Licensee shall reimburse University for all “special” maintenance and operational services requested by Licensee and for the costs of repairs to the Venue necessitated by Licensee’s misuse or abuse of the Venue. Licensee shall be given notice of any such damages within 48 hours after the Event and will be given an opportunity to inspect damages within 48 hours after the notice.

 5.2 University shall provide backstage workers, union stagehands, car-loaders, wardrobe, ushers, ticket takers, ticket sellers, custodians, traffic police, emergency medical technicians, security, and other necessary personnel for setting up, running, and cleaning up after the Event. Licensee shall provide University with a proposed list of equipment and personnel needs at least 10 days before the Event. Licensee and University shall mutually determine the number of personnel according to Artist(s)’s needs, University labor agreements and University regulations. Licensee shall reimburse University for all personnel wages, production expenses and fees including, without limitation, those listed above.

 5.3 Licensee shall be responsible for any and all expenses incurred by University to provide reasonable accommodation to people with disabilities for the Event, including the Artist(s) and those involved in production. This includes but is not limited to fees for an interpreter(s), approval of complimentary tickets, discounts, or other expenses necessary to meet the requirements of the Americans With Disabilities Act. The public areas of Northrop and the Venue are accessible to patrons with disabilities and incorporate locations for wheelchairs.

# 6. Licensee’s Duty to Furnish Artist(s). Licensee shall furnish and pay the Artist(s). Upon request, Licensee shall provide University with a copy of a signed contract with Artist(s). Licensee shall pay all deposits, expenses and fees required by the Artist(s), including any applicable taxes required by the State of Minnesota, and any additional musicians if required by the local musicians union. Licensee shall provide food, beverages and other accommodations requested by the Artist(s) in accordance with applicable University and Venue policies and exclusive contracts with University vendors. Licensee shall furnish security for the Artist(s) and the Event from a company licensed and bonded in the state of Minnesota and approved in advance by University. Licensee will furnish University evidence of such license and bond upon request.

# 7. Promotion and Advertising. Licensee will provide a variety of high resolution images and video clips for approval of use by University in promotion of the Event. University shall list the Event on the Northrop events web page, social media channels, interior digital signage, printed list of upcoming events, online Twin Cities event calendars and Northrop E-mail Club e-mails. Additional marketing support may be available upon request at an additional charge. Notwithstanding the foregoing, it is the responsibility of Licensee to advertise and promote the Event. Licensee shall submit to University for its prior review and approval all marketing and media for the Event (including brochures, flyers, programs, digital ads, and advertisements) to ensure compliance with University policies and procedures and to ensure accuracy and compliance with University and Northrop branding standards.

# 8. Payment of Deposit. Upon execution of this Agreement, Licensee shall pay to University a deposit of $      for each scheduled performance day of the Event. This deposit will be applied to the amounts owing University at settlement. University shall be entitled to retain this deposit if: (a) Licensee fails to cover expenses incurred by University for this Event, or (b) Licensee cancels the Event or reschedules the Event for another date, or (c) Licensee breaches any of its other obligations under this Agreement. Retaining the deposit shall be in addition to any and all other remedies of University.

**9. Ticket Sales.** University will print, distribute, account, remit applicable sales tax, and otherwise manage ticket sales for the Event. No other ticketing system may be used. Licensee shall set ticket prices for the Event and determine whether any applicable sales tax will be included in the ticket price or added to the ticket price. When sales tax is included in the ticket price, the University shall calculate tax due to arrive at net ticket receipts. When sales tax is added to the ticket price, gross ticket receipts less sales tax equals net ticket receipts. When either of the boxes appearing below in this section are checked, no sales tax on the ticket price will be charged. Licensee’s advertising and promotional materials shall include the following statement regarding ticket sales: “Tickets can be purchased at northrop.umn.edu, in person at the Northrop box office, or by phone at 612-624-2345”. When space is limited, the following options can be used: “Tickets at northrop.umn.edu or 612-624-2345” OR “Tickets at northrop.umn.edu.” No change to this statement may be made without University’s express, prior written approval.

[ ]  Licensee represents that it qualifies for the ticket exemption found in Minn. Stat. § 297A.70, subd. 10, and agrees to indemnify and hold harmless the University from and against all costs, expenses, and claims related to any assessed tax in the event the Minnesota Department of Revenue finds Licensee does not qualify for the exemption.

[ ]  Licensee represents that it qualifies for the ticket exemption found in Minn. Stat. § 297A.70, subd. 14, and agrees to indemnify and hold harmless the University from and against all costs, expenses, and claims related to any assessed tax in the event the Minnesota Department of Revenue finds Licensee does not qualify for the exemption.

 9.1 Licensee shall not sell or consign tickets to third parties who will engage in re-selling or distributing such tickets to the public unless mutually agreed by University in writing in advance of such sales. If agreed, ticket service fees will apply and will be charged at settlement. Licensee agrees not to sell or distribute tickets or allow third parties to sell or distribute tickets for any other event on University of Minnesota property prior to or during this Event.

 9.2 University shall be allowed to use 10 seats in the Orchestra Level or Presidents Circle – for University staff and guests, at no charge to University.

 9.3 Office hours of Northrop Ticket Office are 10:00 a.m. to 5:00 p.m., Monday through Friday. The Ticket Office will also be open four hours prior to and one hour past curtain on day(s) of the Event. Additional charges may apply if Promoter requests extended box office hours. Ticket Office hours are subject to change.

 9.4 Please send all ticketing and marketing questions and information to northropeventsetup@umn.edu. Licensee shall provide University with additional ticket information, including set-up, pricing, presale and onsale dates and times, ticket holds and seat kills at least 10 business days prior to the date on which tickets to the Event go on sale. The ticketing set-up fee is $300 per event/performance for reserved seating and $200 per event/performance for general admission. For set-up in less than 10 business days the fees will be $600 and $400 respectively.

 9.5 University reserves the right to hold up to eight tickets for use as trouble seats on day of Event. This inventory will be closely managed and seats will be released for sale if University deems appropriate. Used seats will be processed as comps and unused seats will be returned to inventory.

# 10. Ticket Receipts and Disbursements. University will handle all ticket receipts, which University will deposit and disburse pursuant to the terms of this Agreement.

#  10.1 Within a reasonable time before the Event, University shall provide a written estimate of gross ticket receipts, applicable sales tax and amounts due University. Net ticket receipts held by University shall be accepted as advance payment to the extent such receipts match or exceed the estimated amounts due. When net ticket receipts do not cover the estimated amounts to University, Licensee shall pay University the estimated amounts due for the Event at least 10 working days prior to the Event, by cash or certified funds. University may re-estimate net ticket receipts and expenses incurred as needed at any time prior to, or after the Event, and Licensee shall pay the re-estimated amounts immediately upon presentation of the re-estimated statement. University reserves the right to prohibit Licensee or the Artist(s) from loading into the Venue until payments of such expense are made.

#  10.2 Within 10 business days following the Event, University shall pay to Licensee, by University of Minnesota check, or wire, 90% of the net ticket receipts, less amounts due to University hereunder. University shall retain 10% of net ticket receipts or $      (whichever is greater), with a cap of $      for the Event plus the per ticket facility fee of $3.00 and any additional amounts for payment of all expenses, including any additional sales tax, incurred by University to perform its obligation under this Agreement. University shall also retain $      for each additional day Northrop is used for setup, rehearsal, and tear down. University shall provide a final accounting of ticket receipts and expenses incurred by University. University shall pay to Licensee any remaining net ticket receipts less any remaining amounts due to University hereunder. If the remaining amounts due hereunder exceed the remaining net ticket receipts, Licensee shall pay University the difference within five days of receipt of an invoice from University.

**11. Food, Beverage, and Merchandise Sales.** University reserves its right to sell and serve all food and beverages within Northrop. All merchandise (including, without limitation, programs, T-shirts, posters, CDs, and DVDs) shall be sold in conformance with University rules and policies.

Merchandise Sales:

75/25 Artist/University: University provides sellers, handles credit card sales and commissions and remits applicable taxes. Arrangements for a University seller must be made no later than 30 days prior to Event.

80/20 Artist/University: Artist provides sellers, handles credit card sales and commissions and remits applicable taxes.

Notwithstanding the above, the splits for CDs, DVDs, and Books is 90/10 Artist/University, regardless of the selling party. The selling party is responsible for remitting taxes for these items.

Splits are calculated on gross sales less applicable sales taxes and credit card commissions. University must receive contact information for Artist(s) merchandise representative no later than two weeks prior to the Event. Requests for University supplied sellers must be made at least 10 days in advance of Event. Licensee and the Artist(s) shall comply with University policy and rules regarding the sale, service and/or consumption of alcoholic beverages on University property.

# 12. Liability; Indemnification.

#  12.1 Licensee shall reimburse University for any and all costs University may incur to repair any damage to the Venue or other University property or equipment arising out of or connected with this Event, unless such damage is caused solely by University, its agents or employees. For the purposes of this Agreement, the security personnel, the Artist(s), and the Artist’s agents, guests and employees shall be deemed the employees or agents of Licensee.

#  12.2 Licensee will release, indemnify, hold harmless and defend University from and against any and all claims, costs, causes of action, expenses and liabilities, including, but not limited to, reasonable attorneys’ fees because of (i) Licensee’s violation or alleged violation of any federal or state copyright or similar laws; or (ii) personal injury or death or property damage, arising out of or connected with Licensee’s use of the Venue,except to the extent such claim is caused by the gross negligence or intentional misconduct of University, its employees or agents, subject to the provisions of Section 11.1 above.

#  12.3 University shall not be liable for lost profits, work stoppage or any other special, indirect or consequential damages of any kind.

**13. Insurance.** Licensee agrees to provide and maintain commercial general liability insurance, including contractual liability, with limits not less than $1,000,000 each occurrence and $2,000,000 annual aggregate. Upon execution and delivery of this Agreement, Licensee will deliver to University’s contract administrator, a certificate of insurance (“**Certificate**”) evidencing the required insurance coverage and naming Regents of the University of Minnesota as additional insured. The Certificate shall require the insured to provide 30 days’ advance written notice to University of any intent to cancel or modify the insurance policy. Licensee further represents that it maintains workers compensation insurance to the extent required by law.

**14.** **Pyrotechnics.** Pyrotechnics at the Event must be expressly approved in advance in writing by University. If University approves pyrotechnics, pyro-technicians operating such pyrotechnics must be licensed by the State of Minnesota and have the additional liability insurance required by University, if any. A separate certificate of insurance evidencing the required coverages, insuring Licensee’s obligations under this section, and naming Regents of the University of Minnesota is required. No pyrotechnics will be allowed without receipt of acceptable certificate. Licensee shall comply with all policies, rules, orders, regulations of the University, Minneapolis Fire Department and all other laws relating to fire safety, and shall not have or permit in or about the Venue any gasoline, acetylene or other fuel or combustible or hazardous substance without University’s prior express written permission. All work and materials done, furnished or permitted by Licensee shall be subject to approval by University (and if University so determines, the Minneapolis Fire Department) and unless so approved may be prevented or removed by University. Licensee shall cause all decorations and other combustible materials to be flameproofed, and deliver to University a flameproofing certificate in the form specified by law.

# 15. Stage Access. Licensee shall ensure that Artist(s), production personnel, and security personnel will be the only users of the stage and stage wings and shall prevent unauthorized access to the stage area before, during and after the Event. The parties will work together to make certain that photographic sessions will be permitted only if photos are taken from the general seating level and not on stage level.

**16. Alterations; Signs; Liens.** Licensee shall not redecorate, change or alter the Venue, nor shall Licensee display any signs or advertising on or within the Venue, 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.

**17.** **Personal Property.** Licensee, not University, is responsible for loss of or damage to any personal property of Licensee, its Artist(s) guests, agents, employees or invitees, located within the Venue or on University property, before, during or after the term of the Agreement.

**18.** **Event Conclusion.** Licensee shall cease use of the Venue at the conclusion of the Event and return it in the same good condition as on the date of use by Licensee. Licensee shall reimburse University for any and all costs University incurs to repair any damage to the Venue or other University property or equipment arising out of or connected with Licensee’s use of the Venue, unless such damage is caused solely by University, its officers, employees, agents or representatives.

**19. Cancellation of Event.**

 19.1 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).

 19.2 If Licensee cancels the Event because of University’s breach and University fails to cure such breach within a reasonable time after notice of such breach, University’s total liability to Licensee shall not exceed the amount of the deposit required of Licensee in Section 8.

 19.3 If University cancels the Event for a breach by Licensee and Licensee fails to cure said breach within a reasonable time after notice of the breach, or if Licensee cancels the Event for a reason other than University’s breach or an Event of Force Majeure, University shall be entitled to collect from Licensee all reasonable expenses incurred by University in connection with the Event, and $1.00 per ticket issued for the Event, including the retention of the deposit.

 19.4 In no event shall either party be liable for the indirect, consequential, incidental, lost profits or like expectancy damages arising out of this Agreement.

**20. 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.

 20.1 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.”

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

**21. Performance Recordings.** Neither Licensee nor any third party is authorized to make audio or visual recordings of the Event or broadcast the event without University’s advance written consent, which may be granted or withheld at University’s sole discretion. University will take reasonable efforts to prevent unauthorized recording and broadcasting of the Event, but will have no liability for such recording or broadcasting.

**22. Copyright Representation and Release.** Licensee represents that copies of presentation materials Licensee provides to University, or directs University to copy and distribute to patrons, 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 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.

# 23. Assignment. Licensee may not assign any rights or obligations of this Agreement without the prior express written consent of University. In the event of any assignment, Licensee shall remain responsible for its performance and that of any assignee under this Agreement. This Agreement shall be binding upon Licensee, and its successors and assigns, if any. Any assignment attempted to be made in violation of this Agreement shall be void in University’s sole discretion.

**24. Governing Law and Jurisdiction.** The laws of the state of Minnesota shall govern the validity, construction and enforceability of this Agreement, without giving effect to its conflict of laws principles. All suits, actions, claims and causes of action relating to the construction, validity, performance and enforcement of this Agreement shall be in the courts of Hennepin County in the State of Minnesota.

**25. Notices.** All notices, requests and other communications that a party is required or elects to deliver shall be in writing and shall be delivered personally, or by facsimile or electronic mail (provided such delivery is confirmed in writing by the receiving party), or by a recognized overnight courier service or by United States mail, first-class, certified or registered, postage prepaid, return receipt requested, to the addresses listed in Section 3 of this Agreement. A copy of any notices to University will be sent to Office of Real Estate, University of Minnesota, 451 Donhowe Building, 319 – 15th Avenue SE, Minneapolis, MN 55455, and to University’s Office of the General Counsel, 360 McNamara Alumni Center, 200 Oak Street SE, Minneapolis, MN 55455.

# 26. Authority to Execute Agreement. The person signing this Agreement on behalf of Licensee represents and warrants that they have the legal authority to sign this Agreement on behalf of Licensee and to bind Licensee to the covenants and conditions of this Agreement. If the person is not so authorized, they shall be personally liable for performance of Licensee’s obligations under this Agreement. This Agreement may be executed electronically and in counterparts, each counterpart of which shall be deemed to be an original and together shall constitute one and the same Agreement. A signed copy of this Agreement delivered by email or other means of electronic transmission will have the same legal effect as delivery of an original signed copy of this Agreement.

**27. License Only; Remedies.** Licensee acknowledges that this Agreement represents a grant of a 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 or pursue all other remedies available to University.

**28. 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.

**29. Survival.** After expiration or termination of this Agreement, all provisions relating to payment of amounts owed or previously accrued will survive until completion of required payments. In addition, all provisions regarding indemnification, liability and limits thereon will survive until fulfilled.

# IN WITNESS WHEREOF, the parties have entered into the Agreement as of the date first above written.

|  |  |
| --- | --- |
| **Regents of the University of Minnesota**By: Name: Kari SchlonerTitle: Executive Director of NorthropDate:  | **Licensee:**      By: Name:      Title:      Date:  |