

TERMS AND CONDITIONS
FOR USE OF
THE O'SHAUGHNESSY AUDITORIUM

These **Terms and Conditions** are attached to and form a part of the Use and Rental Agreement for space and facilities in The O'Shaughnessy Auditorium (The O'Shaughnessy) in The Mother Antonia McHugh Fine Arts Center at St. Catherine University in St. Paul, Minnesota. **NOTE: THESE TERMS AND CONDITIONS ARE AN INTEGRAL PART OF YOUR USE AGREEMENT.**

The University and the User respectively agree to and shall perform the following terms, covenants and conditions:

1. **Purpose:** The User named in the Use and Rental Agreement is granted the right to use the Facility at the University at the times and for the purposes specified therein and for no other purpose, subject to termination of such right as hereinafter provided. The User represents and agrees that all performances shall be dignified and thoroughly high class in caliber, consistent with the transitions and purposes of the University. User is and shall be deemed an independent contractor and not an employee, agent, representative or co-venturer of the University. The Agreement confers use privileges only and does not create any tenancy or other estate in User. The University agrees, however, not to use or grant privileges to others to use the Facilities during the times reserved for User's performances, nor to use or grant privileges to others to use the Facilities during the scheduled rehearsal periods without first giving User a reasonable alternative period or periods and reasonable advance notice.

2. **Definitions:** As used in these Terms and Conditions and the attached Use and Rental Agreement, unless the context otherwise indicates:

"User" means the User named in the attached Agreement and its officers, employees, agents, representatives, any independent contractor employed by User and also patrons attending the User's Program.

"Auditorium" means The O'Shaughnessy Auditorium building in The Mother Antonia McHugh Fine Arts Center on the campus of St. Catherine University, in St. Paul, Minnesota.

"Facilities" shall be as described in the attached Agreement and shall in no case include the area known as the "President's Box" or any part of the Auditorium or the furnishings or equipment thereof except as follows:

- (a) The auditorium, entrance halls, lobbies, toilets and similar areas and facilities which are used for receiving, seating, handling and discharging of patrons of the auditorium during the production and presentation of musical and theatrical events, and
- (b) The stage, loading area, stacking area,

green room, orchestra pit, and dressing rooms which are used for production and presentation of such events.

3. **Deposits, Rent Payments, Other Expenses:** User agrees to pay a Base Rent deposit and base rent to the University as set forth in the attached Agreement and all other expenses as specified therein. Expenses shall be payable no later than 30 days after the performance(s) unless otherwise specified in an Exhibit to the Agreement.

4. **Deposits:** User's Deposit, made in the sum provided in the attached Agreement, may be held by the University and applied to the payment of any rent payments due or to become due and owing from User and also to any loss or expense which the University may suffer on User's account, including without limitation (a) any charges for insurance, salaries, equipment or services incurred by the University on User's behalf, (b) the cost of removal and storing of any stage settings, scenery decorations, or other equipment or property erected or placed by User and not removed by User at the end of the performance period and (c) the cost of repair or replacement of any damaged University property. If it appears to the University that all rent and expenses have been timely paid by User and there is no damage to the Facilities or other University property arising from the performance or attributable to the User, the University will credit it on the final invoice, but the University reserves the right to withhold said Deposit as long as is reasonably required, in the opinion of the University, to ascertain the existence and amount of any unpaid rent, expenses and damages. User's obligation to pay rent, expenses and damages is not limited to the amount of the deposit and user agrees to pay all such rent, expenses and damages to the University and to indemnify and hold the University harmless against all loss, expense and liability from the acts or omissions of User or arising from or on account of the Program or its performance under that attached Agreement.

5. **Cancellations/Refunds:** Users shall be entitled to cancel this Agreement only as provided in Section 5. Upon signing the Agreement, User is required to pay to the University a Base Rent deposit. This deposit is NOT refundable. If User gives written notice of cancellation of this Agreement to the University more than 60 days prior to the scheduled event, no additional fees beyond the non refundable Base Rent Deposit will be due the University. If User cancels this Agreement fewer than 60 days prior to the scheduled event, User agrees to pay to the University the entire Base Rent on or before the date of the canceled event.

6. **Advertising:** User agrees to refrain from advertising the performance until after the Agreement is executed and deposits are made. If advertising appears before execution of this Agreement, the O'Shaughnessy Director reserves the right to withdraw and cancel the Agreement. All advertising must include the words "The O'Shaughnessy at St. Catherine University." Also, if User's event is sold through the O'Shaughnessy, user MUST include the following language in their advertising: Tickets are available through The O'Shaughnessy ticket office by calling 651-690-6700, visit oshag.stkate.edu, or in person at 2004 Randolph Avenue, St. Paul, MN.

7. **Identification of Locations:** User will identify the location of The O'Shaughnessy, as being located on the campus of St. Catherine University on all printed material and advertising, whatsoever, under the direct control and contracted for by the User. Failure to comply will result in an additional \$100 due and payable to the University.

8. **Insurance:** Without thereby limiting User's agreements to indemnify the University contained herein, User agrees to procure, at its own cost and expense, public liability and property damage insurance to protect the User, the University and its Board of Trustees, officers and employees, from any claims for damage to property (including the University's property) and for all personal injuries, including death, which may arise from the use of the facilities by User, as follows:

- (a) Public Liability with minimums of \$100,000.00 for injury to any one person and \$300,000.00 for injuries in any one occurrence; and
- (b) Property damage with a minimum of \$50,000.00

9. **Tickets:**

Due to Minnesota Revenue Notice #03-14, tickets cannot be sold until a contract signed by both parties is in place.

Tickets will be sold according to one of the following:

Public Sale: For all public sale events, The O'Shaughnessy will sell tickets through The O'Shaughnessy Ticket Office and its own outlets including in person, by phone and online. Receptions, reserved tickets for general admission shows and meet and greets passes are available through The O'Shaughnessy.

As designated ticket office for at least 50% of the tickets for this event, The O'Shaughnessy will be responsible for providing personnel in the ticket office Monday through Saturday, 12pm to 5 pm (Note: Subject to change in January and summer months). The O'Shaughnessy Ticket Office will be staffed on the day of the performance from one hour prior to the start of the performance through the first intermission of the performance. The O'Shaughnessy personnel will be responsible for selling tickets, processing phone orders (if applicable), answering phone inquiries, and maintaining records. The staff is also responsible for internal public relations including The O'Shaughnessy web page, notification to the campus and the intercampus publications of this event, and the posting of handbills, posters, and reviews of this event on The O'Shaughnessy bulletin board.

The O'Shaughnessy Ticket Office will present a complete accounting to the User within fifteen working days of the final performance. If The O'Shaughnessy owes the User money as a result of ticket sales, a check will be presented to user within fifteen working days of the final performance.

The O'Shaughnessy will collect a \$2 Restoration Fee on every ticket sold reflecting current industry practice. Client may include language on advertisements that the ticket price does not include a \$2 facility restoration fee. Other fees may be added for online or phone sales at the discretion of The O'Shaughnessy.

The User agrees to pay a \$125 set-up fee, 5% commission on the gross of all sales, and staffing costs for the performance, to be deducted from the ticket proceeds.

In certain circumstances, it may be advantageous for the User to sell tickets directly, while still offering tickets through The O'Shaughnessy's Ticket Office and online. In these mutually agreed-upon cases, some tickets will be made available to the User on a Consignment basis, and The O'Shaughnessy is not liable for accounting for or collecting funds for those tickets. The User agrees to pay a \$ Restoration Fee for every ticket distributed on Consignment. Any unsold tickets

must be returned to The O'Shaughnessy Ticket Office prior to the final settlement. In addition, The O'Shaughnessy will charge a \$0.50 per ticket printing fee to cover the cost of ticket stock and administration.

In no event shall tickets be sold through third parties such as Goldstar, Living Social, Groupon, or other similar agencies without prior agreement and consultation with The O'Shaughnessy. Any such sales may be cause for termination of this contract.

There will be no draw against advance ticket sales.

User agrees that:

(a) In no event shall tickets be sold or dispensed in excess of seating capacity of the Auditorium. Such Auditorium capacity is defined as follows: Balcony, 1,086; Main Floor, 641; Temporary Pit seats (if ordered), 75; with a possible grand total seating of 1,802. In no instance shall the User sell or allow to be sold or given away to any person or persons, tickets or permission to occupy any steps within the Auditorium or allow standing room in any doorways or passageways of said Auditorium. No seating will be allowed on the stage without the consent of the O'Shaughnessy Director whose decision shall be final.

(b) Admission to the Program or performances shall be by ticket only. General admission tickets are not permitted unless special approval is obtained for events which lend themselves to general admission ticketing, as determined by the O'Shaughnessy's Director. All reserved seat tickets are provided by The O'Shaughnessy.

(c) The admission prices to be charged for the Program shall be as represented to the University by the User at the time of execution of this Agreement or, if not so represented, shall be subject to the reasonable approval of the O'Shaughnessy's Director or other authorized representative of the University.

(d) If some of the normal seating area is to be used for some other purpose such as sound mix, light board, etc., approval by the O'Shaughnessy's Director is required, and tickets in that area must be pulled before the public ticket sale is opened.

(e) There shall also be reserved to the University, without charge to the University, a reasonable number of "trouble seats" to assist with patron management.

Private Sale: If the event is not open for public sale (private benefit, Dance Recitals, etc) then The O'Shaughnessy will procure tickets for the event from a source approved by The O'Shaughnessy. Tickets will be subject to a ticket printing fee.

Because privately sold tickets generally have a lower ticket price, a flat fee of \$600 per performance for Main Floor events, \$900 for Main Floor + Front Balcony events, and \$1,200 for Full House events will be collected as facility restoration fees. The O'Shaughnessy encourages clients to add \$.50 or \$1 to their ticket price to offset this expense.

Free Event: If the event is not ticketed, or has free tickets only, it will be subjected to the same fees as privately sold tickets, including Restoration Fees and printing fees. The O'Shaughnessy will procure tickets (if required) from a source approved by The O'Shaughnessy.

10. **Concessions/Merchandise:** The University reserves unto itself the sole right to sell or dispense soft drinks, alcoholic beverages such as beer and wine, candies, food, or any related merchandise sold or dispensed in the auditorium and to operate the parking lots and coat check. Users may sell program-related merchandise such as CD's, t-shirts and posters through lobby sales in the auditorium. Unless otherwise stated in the use and rental agreement, the User will handle all sales, and The O'Shaughnessy will charge the User a 20% commission of the gross merchandise sales. Final accounting will be processed, and The O'Shaughnessy will be paid, at the conclusion of the event(s).

11. **Control of Premises:** In renting the Facilities to the User, the University does not relinquish the right to control the management of the Auditorium, nor its title or right to possession or control thereof. The University and its representatives, including the O'Shaughnessy's Director, may enter any part of the Auditorium premises, including any part of the Facilities, at any time and on any occasion. At all times during performances, the O'Shaughnessy's Director and/or representative shall have the right to control and specify the house lighting level or intensity within the performing area of the Auditorium, and to control the opening of the house and the beginning of all performances.

12. **Representatives and Warranties as to Program:** User agrees, represents and warrants that nothing contained in the Program, performances or in any other way connected with User's activities under the Agreement do or shall (a) violate or infringe upon any copyright, right of privacy or other statutory or common law right of any person, firm or corporation, or (b) if the same is authorized under this Agreement to be broadcast by radio or television, violate the Code of Good Practices of the National Association of Broadcasters, or (c) violate

any SESAC, BMI, ASCAP or similar professional organization regulations which include that neither The O'Shaughnessy nor the University is responsible for any professional fees and that User agrees to pay such fees directly to the professional organization, or (d) defame or be harmful to the reputation of any person, firm or corporation, including without limitation, the University or any of the entities thereof or therein, including its President and Board of Trustees.

13. Termination by University: The University shall have the right, power and authority, but not the obligation to cancel this lease and the whole thereof on six (6) hours' notice given in writing or orally if, in the opinion of the University (a) the program, songs, speeches or other dialogue, performances and the like, of whatever kind or nature, scheduled for presentation in the Auditorium, or the advertising or other promotions connected therewith, contain, speak or suggest lines or scenes or exhibitions or anything else, which are considered vulgar, obscene, licentious, indecent, immoral, illegal, scandalous or objectionable or contrary to the policy of the University, or (b) the purposes of use are proposed to be changed in any respect from those set forth in the attached Agreement, or (c) the User is in default hereunder and, after written notice by the University, has failed to cure such default to the satisfaction of the University within such time as the University shall specify in such notice.

14. Assignment: User agrees not to assign, transfer, convey, sublet, or to otherwise dispose of this Agreement or its right to use the Facilities, to any other person, company or corporation without the previous consent in writing of the University.

15. Compliance with Laws and Regulations: The User is subject to and agrees to comply with (a) all applicable laws of the United States of America and State of Minnesota and ordinances of the City of St. Paul and rules and regulations of any agency or department thereof, and (b) the rules and regulations of the University applicable to the Auditorium, parking and other University properties, including (without limitation) (i) any use or practice which would increase the risk of fire or other hazard or the cost of any insurance against fire or other hazard and (ii) any obstruction of the aisles, entrances and exits to the Auditorium.

16. Fire and Hazardous Special Effects Prohibited: User shall not use, or cause to be used, any fire including lighted candles, lanterns, or hazardous special effects, etc., on the stage or in the backstage area for either rehearsals or performances.

17. Animals Prohibited: User shall not bring or permit to be brought any animals or birds, including animal performers and pets, into the Auditorium without the express written permission of the O'Shaughnessy Director.

18. Smoking: The entire University Campus is designated non-smoking, including The O'Shaughnessy.

19. O'Shaughnessy Stage Personnel: User must contact the O'Shaughnessy Production Manager at least three weeks prior to the rehearsal/ performance to make technical arrangements. Choice and assignment of stage crew is at the discretion of The O'Shaughnessy Production Manager and contingent upon the demands of the User's production. Control and supervision of the backstage personnel and technical crews is reserved to The O'Shaughnessy Production Manager or representative. Consumption of food and/or beverages is allowed only in the green room and backstage hallway. No person shall be permitted to work backstage on a technical crew if the Production Manager determines that person incapable of performing their assigned tasks in a safe, professional manner.

20. Police/Security Guards: The O'Shaughnessy Director shall determine the number of guards necessary and shall communicate these numbers to the User. User shall employ these guards at their own expense, for the purposes of maintaining order and protecting the property of the University. These officers shall come on duty at the Auditorium one hour prior to the beginning time of the scheduled performance(s) or event and remain on duty until the performance has concluded and the ticketed audience has left the Auditorium. The guards shall take their direction from the O'Shaughnessy Director.

21. Defacing Auditorium: User will not, without consent of the O'Shaughnessy Director or Production Manager, cause or permit any nails or other things to be driven into any portion of the Auditorium, nor any signs to be affixed either to the exterior or interior thereof, nor cause or permit any changes, alterations, repairs, painting or staining of any part of the Facilities thereof, nor do, nor permit to be done anything which will damage or change the finish or appearance of the Auditorium or the furnishings or equipment thereof. User agrees to pay the cost of repair and all injury and damage which may be done to the Auditorium or any of the fixtures, furniture, or furnishings thereof by User (as

herein defined). It is expressly agreed that the O'Shaughnessy Director shall determine whether any such damage has been done, the amount thereof, the reasonable cost of repairing the same and whether it is damage for which, under the terms of this Agreement, User is responsible. The O'Shaughnessy Director's decision shall be final unless arbitrary, unreasonable or based on a mistake of fact or interpretation or User gives written notice of objection to the business office of the University within ten days after such decision.

22. Rehearsal Arrangements: If rehearsal times have not been specified on the Agreement attached hereto, arrangements for rehearsal are subject to rehearsals and/or programs previously scheduled and must be made with the O'Shaughnessy Director, whose decision will be binding. The University reserves the right to limit the number of persons who may come into the Auditorium during any rehearsal. No rehearsal may extend beyond 12:00 Midnight. Rehearsals shall take place without regular stage lighting being turned on. Work lights and portable lighting will be permitted but not necessarily provided by the Auditorium.

23. Intermissions/Lobby Music: All performances of more than one hour shall have at least a fifteen (15) minute intermission. Length of intermission shall be at the sole discretion of The O'Shaughnessy's Front of House and Stage Managers. **ANY EVENT WITHOUT AN INTERMISSION WILL BE CHARGED A \$200 SERVICE FEE.** The O'Shaughnessy reserves the right to play pre-show music in the lobby.

24. Pit Seating: Pit Seating must be chosen at the time of contract, and cannot be added or removed once tickets have gone on sale. There will be a \$100 set up charge for pit seating.

25. Written Program: The University reserves the right to insert a one-page information sheet about admission to the University into any and all programs. User will be informed if such a right is to be exercised.

26. Restoring Stage to House Conditions: It shall be the responsibility of the User to return the stage and the staging areas to house conditions.

27. Removal: Following completion of the final performance under this Agreement, User, at the expense to User, shall promptly remove or cause to be removed all scenery, special staging and other property and equipment brought into the Auditorium. If not so done, O'Shaughnessy Director

shall have items removed at User's expense. User shall remove or store, as directed by the O'Shaughnessy Director or Production Manager, all such property and equipment from Auditorium space needed for performances and programs of the University or other Users following performances other than the final performance.

28. Consent Required for Radio, TV, Motion Pictures and Recording: The User does not have the right to use the Facilities for any radio or television broadcast or for motion picture production or recording purposes unless and then only to the extent that such rights are specifically conferred by an Exhibit to the Agreement or other written consent of the University. User agrees not to use the Facilities and not to permit the use of the Facilities by itself or any other person, for such radio, television, motion picture or recording purposes unless and then only to the extent that such rights have been granted by the University to the User under this Agreement. If User shall nevertheless use or permit the use of the Facilities for any such purposes, the User agrees to pay and shall be liable to the University for the reasonable value of such use, which in any case shall not be less than 33-1/3% of the gross revenues (less applicable taxes) received or receivable by User on account of such use.

29. Utilities: The University shall furnish such regularly provided heat, air conditioning, water, light, and janitor service as is reasonably required for the use of the Facilities within the state and federal energy conservation mandates. User agrees to hold the University harmless in energy un-availabilities. Any extraordinary electrical, utility or other type service, if reasonably available, will be provided at User's expense.

30. Impossibility: In the event the Facilities, or any part thereof, shall be destroyed, or damaged by fire or any other cause rendering it unfit for use, or if any other casualty or unforeseen occurrence shall render the fulfillment of this Agreement by the University impossible, including (without limitation) any labor dispute or energy curtailment, then and thereupon this Agreement shall terminate and the User shall pay rental for said Facilities only up to the time of such termination, and the University shall refund all additional moneys and shall hereby waive any claim for damages or compensation should this Agreement be so terminated.

31. No Warranty or Liability by University: The University makes no representation, warranty or agreement that the Auditorium or the Facilities are suitable for the User's purposes, and the User agrees

to accept the Facilities as they are at the date of execution of the attached Agreement, with such changes therein as may be made by the University after notice to the User or, without notice, in the ordinary course of business. The University shall not be liable for any loss, damage or injury to any persons or property in the Auditorium or on University property arising out of or in connection with the Program or this Agreement, and the User shall indemnify and save the University harmless against all such liability and expense. All risk and expense in connection with the Program shall be borne by the User, and User shall receive all the benefits and earnings there from, subject to payment of the rent and other sums payable to the University hereunder. The University is not and shall not be responsible for losses by the User, its agents or employees or ticket holders occasioned by theft or disappearance of equipment or other personal property.

32. Indemnification: User hereby agrees to indemnify, save and hold harmless the University and its Trustees, officers, agents and employees, (a) against any and all loss and/or damage to any and all parts of the Auditorium or Fine Arts Center, including (without limitation) the Facilities and all furnishings whereof, which may occur at the time of performance of the Program, or at any time, as a result of use by User. User's officers, agents, employees, independent contractors employed by User or others in any way connected with User, including persons attending the Program, and (b) against any claim of liability, loss or damage by any person or persons for personal injury (including death) or infringement of personal rights, including (without limitation) libel, slander, invasion of privacy, copyright infringement and damage to property which may occur at the time of performance of the Program or, at any time, as a result of use by User or any persons similarly connected with User, and (c) against any claim, loss or damage by reason of any breach or failure of any agreements, representations, and warranties contained herein, and (d) against all claims of any kind and nature arising from or in any other way connected with the performance or preparation for the Program or the use by User of the Facilities, including (without limitation) claims for the payment of taxes of any kind or nature User hereby further agrees to assume, at its own expense, the defense of any of the aforesaid losses, damages or claims or of any action or actions based thereon and pay the reasonable fees and expenses of attorneys employed by the University to defend against any claim covered by this paragraph.

33. Limitation of University's Liability to User: In the event the University should be or become liable to the User under the terms of this Agreement or for any act, occurrence or default arising from or related to the Program or this Agreement, the University's liability shall be limited to the amount of rent and deposit payments made or payable hereunder, and in no event shall the University be liable to pay to the User any sum greater than the payments received by the University from the User under this Agreement.

34. Interpretation: The Use and Rental Agreement and these Terms and Conditions are to be construed and governed by the Laws of Minnesota. Time is the essence hereof. Each and every provision, condition and covenant and exhibit hereof is a material part of the consideration for this Agreement, including, with limitation, those set forth in any exhibits which are attached hereto. No modification or amendment to this Agreement or consent to the waiver of any of the terms hereof, shall be binding unless made in writing and signed by both the University and the User. Any alteration of this Agreement or exhibits or any addenda which may be attached hereto, by method of "crossing out" or "adding" by typewriter, pen, ballpoint pen, or whatever, except in blank lines indicating the need for insertion of written words or numbers to complete Agreement, shall be disregarded unless mutually agreed upon and signed by both the Users and the University. This Agreement constitutes the entire agreement between the parties and no representations or promises, verbal or otherwise, have been made except as herein set forth.

35. Promise to Pay I promise to pay to the University the amount outlined in this contract. If I fail to pay the amount owed, my account will be considered in default. If I am in default, the University may require immediate payment of all amounts owing under this agreement.

After internal collection efforts have failed, my account may be sent to an outside collection agency. Collection fees will be assessed on the unpaid balance of my account. The University reserves the right to report both positive and negative payment histories to credit-reporting agencies and may obtain a credit report on me at any time in the future. The University or a collection agency may bring a lawsuit to collect the amounts I owe. The University may also use any other legal remedy to collect my unpaid debt. The University may delay enforcing any of its rights without losing them.

36. Collection Costs & Fees If my account is sent to collections, I agree to pay the University all collection



fees, which may be based on a percentage, and all costs and expenses, including reasonable attorneys' fees, which the University may incur in such debt collection efforts.

37. **Governing Law** This agreement is governed by the laws of the State of Minnesota. Regardless of where the User's address may be, the laws within the state where this agreement originates controls enforcement.