FACILITY USE AGREEMENT

BETWEEN

**TENNESSEE STATE UNIVERSITY**

**AND**

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

This Facility Use Agreement (this “Agreement”) is made this \_\_\_ day of \_\_\_\_, 2023, by and between **TENNESSEE STATE UNIVERSITY** (the “Institution”) and **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_** (the “User”) for the use by User of certain space or facilities owned by Institution.

# WITNESSETH

In consideration of the mutual promises herein contained, the parties have agreed and do hereby enter into this Agreement according to the provisions set out herein:

1. Space. Subject to the terms of this Agreement, Institution agrees that User may use the following space, and equipment, if necessary, (the “Space”) at the Institution:

(INSERT DESCRIPTION OF SPACE AND EQUIPMENT TO BE USED)

1. Permitted Use. User may use the Space for the following purpose, and for no other purpose:

(INSERT DESCRIPTION OF USE ALLOWED)

User may use the Space on the following date(s) and during the following hours:

(INSERT DATES AND TIMES OF USE)

1. Term. The effective date and term of this Agreement shall be from \_\_\_\_\_\_\_\_\_\_\_ to \_\_\_\_\_\_\_\_\_\_\_\_, at which time User’s right to use the Space under his Agreement will automatically expire. The parties may extend this Agreement for an additional period or periods of time by executing a document signed by both parties. Under no circumstances shall the term of this Agreement extend beyond five (5) years from the effective date.
2. Termination. This Agreement may be terminated by either party by giving written notice to the other, at least one (1) week prior to the effective date. In the event of cancellation of the facility use within one (1) week of the scheduled use, the User shall pay to the Institution all actual cost and/or “out of pocket” expenses incurred by the Institution, including the expenses associated with any ticket refunds. Such costs and expenses shall be deducted from the User’s refundable deposit.

This Agreement may be terminated without the above-described notice if performance is prevented by an occurrence beyond the parties’ control that could not be avoided by the exercise of due care, including, but not limited to, acts of God, riots, wars, epidemics or pandemics, declaration of a federal, state or local state of emergency, or any other similar occurrence or cause, event (known as a “Force Majeure event”). Institution may also immediately terminate this Agreement if it becomes aware of any threat to personal or public safety arising prior to, at, or during the intended time of performance.

1. Facility Use Fee. User agrees to pay the Institution the following fees:
2. Rental Fee: $\_\_\_\_\_\_\_\_\_\_
3. Set-Up Fee: $\_\_\_\_\_\_\_\_\_\_
4. Clean-Up Fee: $\_\_\_\_\_\_\_\_\_\_
5. Security Fee: $\_\_\_\_\_\_\_\_\_\_
6. Total Facility Use Fee: $\_\_\_\_\_\_\_\_\_\_
7. Payment. A deposit in the amount of twenty-five percent (25%) of the total fee is due at the time the User signs and submits this Agreement. The remaining balance of the fee is due two (2) weeks prior to the facility use (“two-week deadline”). The payment of the 25% deposit reserves the Space requested up to the date the payment of the remaining balance is due. The User will not be permitted to use the Space until full payment is received by Institution. The User may submit payment of the remaining balance at any time prior to the two-week deadline. In the event of timely termination by the User in accordance with this Agreement, 15% of the 25% deposit is non-refundable.

User agrees that the fees included above are subject to change depending on any adjustments of services on the date of the facility use. User shall be notified of any such increase to include the actual costs incurred. User shall be responsible for all costs related to the facility use not specifically stated herein. Checks should be made payable and mailed to:

Tennessee State University

3500 John A. Merritt Boulevard

Nashville, Tennessee 37209-1561

Attention: Events Management

1. Governing Law and Venue. This Agreement shall be governed by and construed pursuant to the laws of the State of Tennessee. Any action between the parties arising from this Agreement shall be maintained in the courts of Davidson County, Tennessee.
2. Compliance with Laws. When using the Space, User agrees to comply with all applicable state, federal or local laws and regulations, and with the policies and regulations of the Institution pertaining to the use and occupancy of the Space.

User agrees to take good care of the Space and to maintain the Space in as good order and condition as it was prior to User’s use.

User agrees not to use or allow the Space to be used for any unlawful purpose. User agrees not to commit or allow to be committed any waste or nuisance in or about the Space or subject the Space to any use that would damage the Space or raise or violate any insurance coverage maintained by or for the benefit of the Institution.

User acknowledges that Tennessee state law prohibits alcoholic beverages on State property.

1. Security. The Tennessee State University Police Department shall oversee all security operations and determine the necessary requirements to adequately meet the scheduled activities.

User agrees to provide adequate identification upon request to appropriate Institution officials and security personnel.

1. Parking. All concessions, vending, and parking rights, except as provided herein, shall belong to the Institution, except that no parking fees shall be charged or paid during the facility use.
2. Insurance. The User, being an independent contractor and not an employee of this Institution, agrees to carry adequate public liability and other appropriate forms of insurance, to pay all taxes incidental hereunto, and otherwise protect and hold Institution harmless from any and all liability not specifically provided for in this Agreement.

The User, at its expense, agrees to procure and maintain during the term of this Agreement a policy of commercial general liability insurance with minimum limits of $1,000,000 per occurrence, $3,000,000 in the aggregate, against claims for bodily injury, personal injury, death, medical claims, and property damage occurring in connection with User’s use of the Space, except as specifically provided under the TSU Policies and Procedures governing Non-Affiliated Individual Facility Rental. This insurance must name Tennessee State University as an additional insured on the Insurance rider and said rider must be received three (3) weeks prior to the event and delivered to TSU Events Management.

If any policy providing insurance required by this Agreement is cancelled prior to the policy expiration date, the User, upon receiving a notice of cancellation, shall give immediate notice to the Institution. The enumeration in the Agreement of the kinds and amounts of liability insurance shall not abridge, diminish or affect the User’s legal responsibilities arising out of or resulting from the services under this Agreement.

1. Liability. User agrees to conduct its use of the Space in a careful and safe manner. As a material part of the consideration to Institution, User agrees to assume all risk of damage to and loss or theft of User’s property while at Institution, damage to the Space, and injury or death to persons related to User’s use or occupancy of the Space in, upon, or about the Space from any cause, and User waives all claims against Institution. User hereby agrees to indemnify and hold Institution harmless from any and all liabilities arising out of its use of the Institution’s facility, including, but not limited to, personal injury, property damage, sexual misconduct, court costs, and attorneys’ fees.
2. Environmental Regulations. User will not permit any Hazardous Substance to be used, stored, generated or disposed of on, in or about, or transported to or from, the Space, by User, User’s agents, employees, contractors, invitees, subtenants, concessionaires or Users without first obtaining Institution’s written consent, which Institution may give or withhold in its sole discretion, or revoke at any time. If Institution consents, all Hazardous Substances must be handled at User’s sole cost and expense, in compliance with all applicable state, federal or local governmental requirements, using all necessary and appropriate precautions. If User breaches these obligations, or if the presence of Hazardous Substances on, in, or about the Space caused or permitted by User results in contamination of any part of the Space, or if contamination by Hazardous Substances otherwise occurs in a manner for which User is legally liable, then User will indemnify and hold harmless Institution, the Tennessee Board of Regents, and the State of Tennessee from and against any and all claims, actions, damages, fines, judgments, penalties, costs, liabilities, losses and expenses (including, without limitation, any sums paid for settlement of claims, court costs, attorneys’ fees, consultant and expert fees) arising during or after the expiration or termination of this Agreement as a result of any breach or contamination. Without limitation, if User causes or permits the presence of any Hazardous Substance on, in or about the Space and this results in contamination of any part of the Space, User will promptly, at its sole cost and expense, take all necessary actions to return the Space and any adjacent facility to the condition existing prior to the presence of any Hazardous Substance; provided, however, User shall first obtain Institution’s approval for any such remedial action. “Hazardous Substance” means any substance regulated by any local government, the State of Tennessee, or the United States government. “Hazardous Substance” includes any material or substances which are defined as “hazardous material,” “hazardous waste,” “extremely hazardous waste,” or a “hazardous substance” pursuant to state, federal or local government law. “Hazardous Substance” includes but is not restricted to asbestos, polychlorobiphenyls and petroleum.
3. Sales and Use Tax. User will be responsible for the payment of all applicable amusement tax and sales tax, if required. If the User makes sales to customers in Tennessee of taxable goods or services, the User shall be registered with or have received an exemption from the Department of Revenue for the collection of Tennessee sales and use tax. This registration requirement is a material requirement of this Agreement. The User shall comply with all laws and regulations governing the remittance of sales and use taxes on the sale of goods and services made by the User.
4. Prohibition on Hiring Illegal Immigrants. T.C.A. § 12-3-309 prohibits State entities from contracting to acquire goods or services from any person who knowingly utilizes the service of illegal immigrants in the performance of the Agreement and by signing this Agreement, the Contactor attests, certifies, warrants, and assures that the User shall not knowingly utilize the services of illegal immigrants in the performance of the Agreement and will not knowingly utilize the services of any subcontractor, if permitted under the Agreement, who will utilize the services of illegal immigrants in the performance of the Agreement.
5. Non-Assignment. User shall not assign this Agreement or allow any other person or entity to use or occupy any of the Space without the prior written consent of Institution, which consent may be granted or withheld in Institution’s sole discretion.
6. Relationship of Parties. Neither User nor any personnel of User will for any purpose be considered employees or agents of Institution. It is expressly acknowledged by the parties hereto that the parties are independent contracting entities and that nothing in this Agreement shall be construed to create an employer/employee relationship. The parties agree that neither party shall have any authority to represent or bind the other and that neither party shall hold itself out or have any authority as an agent of the other for any purpose whatsoever. User assumes full responsibility for the actions of User’s personnel, and is solely responsible for their supervision, daily direction and control, payment of salary (including withholding income taxes and social security), worker’s compensation and disability benefits.
7. Modification. This Agreement may be modified only by written amendment executed by all parties hereto and approved by the appropriate officials.
8. Severability. If any terms or conditions of this Agreement are held to be invalid or unenforceable as a matter of law, the other terms and conditions hereof shall not be affected thereby and shall remain in full force and effect. To this end, the terms and conditions of this Agreement are declared severable.
9. Non-Discrimination. The parties agree to comply with Title VI and VII of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, Section 504 of the Rehabilitation Act of 1973, Executive Order 11,246, the Americans with Disabilities of 1990 and the related regulations of each. Each party assures that it will not discriminate against any individual including, but not limited to, employees or applicants for employment and/or students, because of race, religion, creed, color, sex, age, disability, veteran status or national origin.

Institution is committed to providing accessible information, materials and technologies to assure that individuals with disabilities have access to Institution resources comparable to access that is available to others.

1. Non-Employment by State. The User warrants that no part of the total contracted amount provided herein shall be paid, directly or indirectly, to any officer or employee of the State of Tennessee as wages, compensation, or gifts in exchange for acting as officer, agent, employee, sub-contractor, or consultant to the User in connection with any work contemplated or performed relative to this Agreement.

If the User is an individual, the User warrants that within the past six (6) months, he/she has not been and during the term of this Agreement will not become an employee of the State of Tennessee.

1. Indemnification. The User agrees to indemnify and hold harmless the Institution as well as its officers, agents, and employees from and against any and all claims, liabilities, losses, and causes of action which may arise, accrue, or result to any person (including Institution), firm, corporation, or other entity which may be injured or damaged as a result of acts, omissions, or negligence on the part of the User, its employees, or any person acting for or on its or their behalf relating to this Agreement. The User further agrees it shall be liable for the reasonable cost of attorneys for the Institution in the event such service is necessitated to enforce the terms of this Agreement or otherwise enforce the obligations of the User to the Institution. Any and all monetary claims against the State of Tennessee, its officers, agents, governing board, and employees in performing any responsibility specifically required under the terms of this Agreement shall be submitted to the Board of Claims or the Claims Commission of the State of Tennessee and shall be limited to those provided for in T.C.A.§ 9-8-307.
2. Iran Divestment Act. In accordance with the Iran Divestment Act, Tennessee Code Annotated § 12-12-101 et seq., User certifies that to the best of its knowledge and belief, User is not on the list created pursuant to Tennessee Code Annotated § 12-12-106. Misrepresentation may result in civil and criminal sanctions, including contract termination, debarment, or suspension from being a User under Institution’s contracts.
3. Nondisclosure and Nonuse. The Institution does not have the authority to consent to provisions which require confidentiality, or nondisclosure in violation of Tennessee Open Records Act. Therefore, each party will treat the other party’s Confidential Information as Confidential to the extent permitted by law. Specifically, each party receiving Confidential Information agrees not to disclose such Confidential Information except to those directors, officers, employees and agents of such party, and shall use the same care to prevent disclosure of such information as such party uses with respect to its own confidential and proprietary information, provided that in any case it shall not use less than the care a reasonable person would use under similar circumstances.
4. FERPA. User acknowledges that students’ education records are protected by the Family Educational Rights and Privacy Act (FERPA) and will comply with FERPA provisions if accessing such records. Student education records will only be used for the purposes of carrying out this Agreement.
5. NCAA Compliance. If applicable to the Agreement, User agrees to comply with relevant National Collegiate Athletic Association (“NCAA”) legislation, interpretations and policies, located on the NCAA website at http://www.ncaa.org/ and as amended from time to time, on the use of student-athlete’s name or likeness. This duty to comply includes, but is not limited to, the requirements found in relevant NCAA Manual, such as NCAA Rule 12.5.2 “Use of Student Athlete Name or Likeness.” User further agrees that it will immediately report any real or suspected violation of the NCAA legislation, interpretations, and/or policies to Institution in the manner prescribed by this Agreement for communicating with Institution. User also acknowledges that this obligation is a material term of this Agreement.
6. Copyrights. If music is to be performed in conjunction with the use of the Space, the parties agree to abide by the following copyright and performance provisions:
   1. The User hereby assures that all necessary copyright and royalty licenses have been obtained from ASCAP, BMI, SESAC and any other performing rights organization or the copyright owner for the performance to be presented under the terms of this Agreement.
   2. The User agrees to provide the Institution the prior written consent of the copyright owner for the copyrighted music or work.
   3. The User agrees to indemnify, hold harmless and defend the Institution and the State of Tennessee from and against any and all claims, demands or suits which may be brought for copyright infringement allegedly arising in the course of the performance presented under the terms of this Agreement. Such indemnification shall extend to both criminal and civil actions and shall include any and all loss, damage, penalty, court costs or attorneys' fees incurred by the Institution as a result of such infringement.
      1. The Institution shall promptly notify the User of any such claim brought against the Institution or the State of Tennessee. The settlement or compromise of any claim brought against the Institution or the State shall be subject to the approval of the appropriate state officials, as required by T.C.A. § 20-13-103.
7. Records. The User shall maintain documentation for all charges against Institution under this Agreement. The books, records, and documents of the User, insofar as they relate to work performed or money received under this Agreement, shall be maintained for a period of three (3) full years from the date of the final payment, and shall be subject to audit, at any reasonable time and upon reasonable notice, by Institution or the Comptroller of the Treasury or their duly appointed representatives. Financial statements shall be prepared in accordance with generally accepted accounting principles. The User shall also submit to Institution periodic progress reports if requested by Institution.
8. Forms. The User agrees that no work shall commence until this Agreement is fully executed by both parties and that a Minority Ethnicity and W-9 forms are completed and returned with this Agreement.
9. \_\_\_\_\_\_\_\_\_\_\_\_ is the Institution’s Contract Monitor for this Agreement and can be reached at tel: \_\_\_\_\_\_\_\_\_\_\_, or email: \_\_\_\_\_\_\_\_\_\_\_
10. \_\_\_\_\_\_\_\_\_\_\_\_\_ is the User’s Coordinator for this Agreement and can be reached at tel: \_\_\_\_\_\_\_\_\_\_\_\_, or email: \_\_\_\_\_\_\_\_\_\_\_\_\_
11. Authority. The individual signing below on behalf of User hereby represents and warrants that he or she is duly authorized to execute and deliver this Agreement on behalf of User and that this Agreement is binding upon User in accordance with its terms.
12. Assent. This Agreement shall not be binding upon the parties until it is approved by Institution’s President.

***[SIGNATURE PAGE FOLLOWS]***

**IN WITNESS WHEREOF**, the parties have by their duly authorized representatives set forth their signatures:

**(INSERT USER NAME HERE)**

Signature:

Title Date

**TENNESSEE STATE UNIVERSITY**

Signature: President

Dr. Glenda Glover Title Date