

## FACILITY USE AGREEMENT

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This Agreement is made this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between the **University of Memphis** ("Institution") and ("User") for the use of the institution's facility as defined below.

### 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 forth herein:

1. The specific use of the facility for which the parties enter into this Agreement is (describe activity):
  
2. The User shall have use of the facility from (time) \_\_\_\_\_ on (date) \_\_\_\_\_ to (time) \_\_\_\_\_ on (date) \_\_\_\_\_. Additional times and purposes for which the User shall have access to the facility are as follows:
  
3. In its use of the facility, the User shall have access to the following (description/location of specific areas/services of the facility available to the User including any restrictions on such use):
  
4. Payment for use of the facility is to be made as follows (include amount, method, time, place, and source, if applicable):
  
5. The following duties shall be the responsibility of the designated party:
  - A. Promotion and publicity shall be provided by:
  
  - B. The Institution shall provide equipment/services as follows:
  
  - C. The User shall provide equipment/services as follows:
  
  - D. Advance ticket sales shall be the responsibility of:
  
  - E. The User shall register with the State of Tennessee sales tax division of the Department of Revenue and shall issue to the Institution a certificate of resale for the rental of the facility.
  
  - F. The User will be responsible for the payment of all applicable amusement tax and sales tax.
  
6. This Agreement may be terminated by either party upon giving \_\_\_\_\_ days written notice to the other party prior to termination. This Agreement may be terminated without the above described notice upon grounds that the facility has been

rendered unusable or the activity has been canceled due to an act of God. The Institution may also terminate this Agreement if it becomes aware of any threat to personal or public safety arising from the intended use. In all other events of cancellation of the activity, the User shall pay to the institution all actual costs and/or "out of pocket" expenses incurred by the Institution, including the expenses associated with any ticket refunds.

7. Concession rights for the activity shall be as follows (designate specific concession, party having right to each concession, restrictions on right to and conduct of each concession and method of dividing revenue, if applicable.):
8. If music is to be performed, the parties agree to abide by the following copyright and performance provisions:
  - A. 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.
  - B. The User agrees to provide the Institution the prior written consent of SESAC, Inc. or the copyright owner for copyrighted music or work for which SESAC is the licensing agent.
  - C. 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.
  - D. 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. Section 20-13-103.
9. The University shall not be liable for any personal accident, injury or illness, including death, to User, User's guests or invitees, any other persons using the Facilities during User's reservation of the Facilities. or for any damage, theft or loss of personal property, except as authorized by and allowed pursuant to T.C.A. Section 9-8-301 et seq. In consideration for permission to enter into this contract and use University Facilities, residents agree to release the University, its Board of Trustees, officers, employees, agents and representatives from any liability, foreseen or unforeseen, on account of any accident, injury, illness, property damage, theft or loss, including death, not caused by the University's gross negligence. Further, User agrees to indemnify the University against any claims arising out of their or their guests' or invitees' use or occupancy of the Facilities or any other properties or premises contemplated under the terms of this Agreement.
10. The User agrees to comply with all federal, state and municipal laws, rules and regulations.
11. The User agrees to furnish proof of insurance or performance bond upon request by the Institution.
  1. The parties agree to comply with Titles 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 Act of 1990 and the related regulations to 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.
  2. The parties also agree to take affirmative action to ensure that applicants are employed and that employees are treated during their employment without regard to their race, religion, creed, color, sex, age, disability, veteran status or national origin. Such action shall include, but not be limited to, the following: employment, upgrading demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection available to employees and applicants for employment.
12. This Agreement may be modified only by written amendment executed by all parties hereto.
13. The User warrants that no part of the total contract amount provided herein shall be paid directly or indirectly to an officer or employee of the State of Tennessee as wages, compensation, or gifts in exchange for acting as officer, agent, employee, subcontractor or consultant to the User in connection with work contemplated or performed relative to this Agreement.
14. Any and all claims against the Institution under the terms of this Agreement shall be submitted to the Board of Claims or the Claims Commission of the State of Tennessee. Damages recoverable against the Institution shall be expressly limited to claims paid by the Board of Claims or Claims Commission pursuant to T.C.A. Section 9-8-301, et. seq.

15. The User shall maintain documentation for all charges against the Institution under this Agreement. The books, records, and documentation of the User, insofar as they relate to work performed or money received under this Agreement, shall be maintained in conformity with generally accepted accounting principles for a period of three full years from the date of the final payment and shall be subject to audit, at any reasonable time and upon reasonable notice, by the Institution or the state Comptroller of the Treasury, or their duly appointed representatives or a licensed independent public accountant.
16. Neither party shall be held liable or responsible to the other party, nor be deemed to have defaulted under or breached this Agreement for failure or delay in fulfilling or performing any term of this Agreement to the extent, and for so long as, such failure or delay is caused by or results from causes beyond the reasonable control of the affected party including but not limited to fire, floods, embargoes, war, acts of war (whether war be declared or not), acts of terrorism, insurrections, riots, civil commotions, strikes, lockouts or other labor disturbances, pandemic, epidemic, acts of God or acts, omissions or delays in acting by any governmental authority or the other party.
17. This Agreement shall not be effective until approved by the President or designee as appropriate.

In witness whereof, the parties, through their authorized representatives, have affixed their signatures below.

(User)	<b>The University of Memphis</b> (Institution)
Name:	Name: Nick A. Pappas
Title:	Title: Procurement and Contract Services, Executive Director
By:	By:
Date:	Date: