**STEPHEN F. AUSTIN STATE UNIVERSITY**

**FACILITIES USE AGREEMENT**

This Agreement (iContracts ######), made by and between Stephen F. Austin State University, hereinafter called "University" and correct name of external user hereinafter called "External User" and correct name of department, hereinafter called "University Sponsor";

**WITNESSETH**

**WHEREAS** the University owns certain facilities as described in this Agreement which, from time to time are available for rent; and

**WHEREAS** External User desires to rent those premises for the purposes herein contained;

**NOW THEREFORE**, in consideration of the mutual covenants and conditions herein contained, the University, External User, and University Sponsor agree as follows:

1.0 Grant:

The University hereby grants permission to External User to use the facilities set forth in Addendum I (hereinafter “Facility”) for the sole purpose set forth in Addendum I and consistent with this Agreement, University Policy 16.33, and any other applicable University policy, which are hereby incorporated into this Agreement.

2.0 Term:

2.1 The term of the agreement shall be for a period set forth in Addendum I.

2.2 External User shall be permitted to use Facility and other spaces as set forth in Addendum I.  Permission to use the Facility shall end on the final date noted in Addendum I. Facility is provided “as is” and “with all faults”, and University makes no representation or warranty of any kind, express or implied, with respect to the condition of Facility, including habitability, fitness or suitability for a particular purpose. University hereby disclaims and External User hereby waives the benefit of, any and all implied warranties, including implied warranties of habitability, fitness or suitability for a particular purpose. External User acknowledges that neither University nor any agent of University has made any representation or warranty with respect to the Facility or the suitability of the Facility for the purpose herein intended. By occupying the Facility, External User is deemed to have accepted the Facility as suitable for its purpose.

2.3 Time shall be of the essence in this agreement.  The time granted for the use of the facility or for the installation or removal of equipment shall not be extended without the written permission of the University, and all additional time shall be paid for according to the schedule of fees as established by the College.

3.0 Fees:

Fees shall be set forth in Addendum I.

4.0 Payment, Accounting and Collections:

External User has deposited with the University at the time of signing this Facilities Use Agreement, a sum equal to 25% of the total rental/use fees as set forth in Addendum I.  The deposit shall be in cash, certified check or bank cashier's check payable to Stephen F. Austin State University, receipt of which is hereby acknowledged, and also agrees that the balance of payments due under this Facilities Use Agreement shall be made within 10 days after holding the event.

External User agrees that any amount not paid when due shall bear interest at a rate of the lesser of (i) eighteen percent (18%) per annum or (ii) the maximum interest rate allowable under state or federal law until paid in full. Failure to pay all applicable fees when due may result in the University taking action in law or equity, and/or using the services of a collection agency to collect any unpaid balance. External User agrees to pay to University its expenses incurred with collection of the unpaid balance, including attorneys’ fees, court costs, collection agency fees, and any relief to which the University may be entitled.

5.0 Liquidated Damages:

Notwithstanding the cancellation provision of this Agreement, it is further agreed that if External User fails to hold the event or events as covered in this Facilities Use Agreement at the agreed time, said User shall forfeit to the University the 25% deposit as liquidated damages.  The liquidated damage fee will apply if the event(s) are canceled any time after the final cancellation date as noted in Addendum I.

6.0 Concessions:

External User shall not sell or cause to be sold programs and/or other novelties in or about the described facilities, except on written terms and conditions as established by the University.

7.0 Applicable Laws:

External User agrees to comply with all applicable laws, ordinances and rules of the University, the State of Texas and the United States, and to pay all taxes imposed by law in connection with its use and occupancy.

External User warrants that it will occupy Facility and conduct its activities in a manner that complies with all applicable provisions of the Americans with Disabilities Act (ADA) and the Rehabilitation Act. Specifically, during the time of its occupancy of Facility, External User agrees to provide auxiliary aids and services as provided for under the ADA whenever such services are required for the events held at the leased premises. External User will make every effort to make Facility accessible for the events and activities held under this Agreement by removal of barriers wherever reasonable (after prior consultation and consent of University for removal of any physical barrier) and will provide alternative aids and services wherever barriers cannot be reasonably removed. EXTERNAL USER AGREES TO INDEMNIFY UNIVERSITY, ITS REGENTS, AGENTS AND EMPLOYEES FROM ANY CLAIMS, LOSSES, SUITS, PROCEEDINGS, DAMAGES OR LIABILITIES, INCLUDING ATTORNEY’S FEES, THAT ARISE OUT OF OR BASED ON THE GROUNDS THAT FACILITY OR SERVICES PROVIDED BY EXTERNAL USER FAILED TO COMPLY WITH THE APPLICABLE PROVISIONS OF THE ADA OR ANY OTHER APPLICABLE LAW. EXTERNAL USER AGREES TO REIMBURSE UNIVERSITY FOR ANY LEGAL OR OTHER EXPENSES INCURRED BY EXTERNAL USER IN CONNECTION WITH INVESTIGATION OF DEFENDING AGAINST SUCH CLAIMS, LOSSES, SUITS, PROCEEDINGS, DAMAGES, OR LIABILITIES, AS AND WHEN SUCH EXPENSES ARE INCURRED. UNIVERSITY RESERVES THE RIGHT TO SETTLE ANY CLAIM, PROCEEDING, OR SUIT AT ANY TIME.

8.0 Fire or Flame Usage:

External User agrees that it will not use fire or flame without the prior approval of the Environmental Health, Safety, and Risk Management Department or a designated University representative.

9.0 Alteration, Decorations, and Damage:

External User shall not injure, mar or in any way deface the premises and shall not cause or permit anything to be done whereby the premises shall be in any manner injures, marred or defaced and will not drive, or permit to be driven, nails, hooks, tacks, or screws into any part and will not make or allow to be made any alterations of any kind therein.

External User agrees that all participants and guests of the External User are under the direct and complete supervision and control of the External User. As such, External User is liable for all damages resulting from participant and/or guest utilization of the facilities and services provided by University. University assumes no responsibility for loss or theft of personal property of damage to personal property of External User or any of its participants or guests.

10.0 Equipment:

External User agrees that it will not use University's equipment, tools or furnishings, located in or about described facilities, without first seeking and receiving the written approval of the University.

11.0 Additional Users:

External User understands and agrees that during the term of this Facilities Use Agreement other events may be held in other parts of the described facilities not included in this Facilities Use Agreement, and External User shall conduct its activities so as not to interfere.

12.0 Parking:

The University agrees that existing parking facilities will be open to such traffic as is occasioned by the External User's use of the Facility, but the External User agrees that the University need not hold such parking facilities for the exclusive use of such traffic.

13.0 Violation and Removal from Premises:

If at any time the uses of the premises by External User violate an applicable ordinance or law of the City of Nacogdoches, County of Nacogdoches, State of Texas, or the United States of America, External User shall either cease and desist from continuing such use or surrender the premises forthwith upon demand of the University.

The terms and conditions of this agreement do not require University to relinquish its control of its facilities and services to External User. University retains the right to require External User, or any of its participants, guests, or subcontractors, to leave University’s premises if University in its sole discretion feels that circumstances require it.

14.0 Indemnification and Waiver of Liability:

UNIVERSITY SHALL NOT BE LIABILE TO EXTERNAL USER, OR TO ANY AGENT, EMPLOYEE, SERVANT, OR INVITEE OF EXTERNAL USER, AND EXTERNAL USER SHALL INDEMNIFY, DEFEND AND HOLD UNIVERSITY HARMLESS FROM AND AGAINST ANY AND ALL FINES, SUITS, CLAIMS, DEMANDS, LOSSES, LIABILITIES, ACTIONS, AND COSTS (INCLUDING ATTORNEY’S FEES) ARISING FROM: ANY INJURY TO PERSON OR DAMAGE TO PROPERTY CAUSED BY ANY ACT, OMISSION, OR NEGLECT OF EXTERNAL USER, IT’S AGENTS, EMPLOYEES, SERVANTS OR INVITEES; eXTERNAL USER’S USE OF FACILITY UNDER THIS AGREEMENT OR THE CONDUCT OF EXTERNAL USER’S BUSINESS; ANY ACTIVITY, WORK, OR THING DONE, PERMITTED, OR SUFFERED BY EXTERNAL USER UNDER THIS AGREEMENT; OR ANY BREACH OR DEFAULT IN THE PERFORMANCE OF ANY OBLIGATION ON UNIVERSITY’S PART TO BE PERFORMED UNDER THE TERMS OF THIS AGREEMENT.

15.0 Insurance:

Proof of insurance is not required for this usage.

External User agrees to obtain at its own cost and expense commercial insurance coverage consisting of commercial general liability insurance (including blanket contractual liability, broad form property damage, personal and advertising injury, completed operations/products liability, medical expenses, and broad form general liability endorsements) for at least Three Hundred Thousand Dollars ($300,000) for each occurrence on an occurrence basis. External User agrees to also obtain automotive liability and sexual molestation coverage (if required) in the limits below. External User shall, on or before thirty (30) days preceding the initial use of the facility, furnish University with a copy of the policy or a certificate that the insurance required by this section has been issued, and University shall be named as an additional insured thereunder with a specific endorsement extending coverage to University. All policies required to be maintained by External User under this Agreement shall be primary and noncontributory to any other insurance, self-insurance, or risk pooling arrangement maintained by University. External User agrees to secure the following minimum coverage:

**General Liability Automobile Liability**

Each Occurrence 300,000.00 Bodily Injury 250,000.00/

Damage to Rented Premises (Ea. Occ.) 100,000.00 500,000.00

Med. Exp. (Any one person) 1,000.00 Property Damage 100,000.00

Personal & Adv Injury 300,000.00

General Aggregate 500,000.00

Products-Com/OP Agg Included

If the event involves an overnight or extended stay, sexual molestation coverage must be explicitly endorsed on the general liability policy with University named as an additional insured.

Governmental agencies and school districts may self-insure for the above amount.

16.0 Campus Program for Minors

To the extent that External User is operating a campus program for minors subject to Texas Education Code, sec. 51.976 or University policy 13.5, Campus Program for Minors, External User hereby certifies that it is in full compliance with Texas Education Code, sec. 51.976, and University policy 13.5 including its requirements that all employees within the last two (2) years have successfully completed a sexual abuse/molestation training course approved by the Texas Department of State Health Services and verification of such compliance has been timely submitted to the Texas Department of State Health Services on the approved form. An External User who is operating a campus program for minors subject to Texas Education Code, sec. 51.976 OR UNIVERSITY POLICY 13.5 shall provide to University within seven (7) days of the start of the event a copy of the verification submitted to the Texas Department of State Health Services in accordance with Texas Education Code, sec. 51.976(d)(1).

17.0 Non-assignment:

External User shall not assign or transfer this Facilities Use Agreement or sublet any portion thereof without the written consent of the University.

18.0 Alcohol Use:

This Agreement grants to External User no greater rights than expressly stated herein and specifically denies any right to External User or possession or occupancy which would be in violation of state laws, rules and regulations, particularly with respect to the dispensing of alcohol and alcoholic beverages.

For functions where alcohol is permitted, External User will be required to participate in the Tenant Users Liability Insurance Program (TULIP). External User must provide to the University the expected number of alcohol sales and other information as required to purchase coverage. The cost of liquor liability insurance will be included in the Fees.

19.0 Inspection:

External User agrees that University personnel may enter upon the used Facilities as hereinbefore described at all reasonable times and make inspection in conformity with this Facilities Use Agreement.

20.0 Governing Law and Venue:

This agreement shall be construed, and the legal relations between the parties hereto shall be determined, in accordance with the laws of the State of Texas and venue shall lie in Nacogdoches, Texas.

21.0 Contract Modifications:

This written agreement shall supersede and void all prior understandings whether written or oral and the terms herein shall bind the parties.  Any modifications or amendments hereto must be done in writing and signed by the parties.

22.0 Cancellation:

This Agreement may be canceled by either party without cause upon 90 days written notice. In the event that University buildings, property, or facilities shall be destroyed or substantially damaged by fire or other casualty, or in the event other circumstances render the fulfillment of this agreement impractical or impossible, External User shall be obligated to pay the fees hereinafter stipulated only for those services, activities, and events which were provided to External User. External User hereby waives any claim for damages or compensation resulting from fire, casualty, or other circumstances causing curtailment of this agreement.

23.0 Alternate Dispute Resolution:

To the extent that Chapter 2260, *Texas Government Code*, is applicable to this Agreement and is not preempted by other applicable law, the dispute resolution process provided for in Chapter 2260 and the related rules adopted by the Texas Attorney General pursuant to Chapter 2260, shall be used by University and External User to attempt to resolve any claim for breach of contract made by External User that cannot be resolved in the ordinary course of business. The Vice President for Finance & Administration of University shall examine External User’s claim and any counterclaim and negotiate with External User in an effort to resolve such claims. The parties hereto specifically agree that (i) neither the occurrence of an event giving rise to a breach of contract claim nor the pendency of a claim constitute grounds for the suspension of performance by External User, (ii) neither the issuance of this Agreement by University nor any other conduct, action or inaction of any representative of University relating to this Agreement constitutes or is intended to constitute a waiver of University’s or the state’s sovereign immunity to suit; and (iii) University has not waived its right to seek redress in the courts.

24.0 Title IX:

University strictly adheres to Title IX of the Education Amendments of 1972, the federal Campus Sexual Violence Elimination Act; United States Department of Education regulations and directives; and the University’s sexual harassment policy and procedures (“Regulations”).  Specifically, the Regulations apply to all students, employees, visitors, and other third parties on University-controlled property, including institutions and entities with whom University places its students.  Further, such Regulations prohibit unequal treatment on the basis of sex as well as sexual harassment and sexual misconduct. As a condition of employment, enrollment, doing business, or being permitted on the campus, the above-mentioned individuals, organizations, and entities must agree to:  1) Report immediately to the Title IX coordinator any and all claims of sex discrimination or sexual misconduct; 2) Cooperate with University’s Title IX investigation; and, 3) Cooperate fully with all sanctions that University may impose against such individual, organization, or entity, who is found to have violated the Regulations.  If the individual, organization, or entity fails to adhere to any of the aforementioned requirements, University reserves the right to take appropriate action, including but not necessarily limited to, immediate removal from campus; discipline of employees and students (including termination of employment and/or expulsion from school); and termination of business or contractual relationships.

25.0 Representations and Warranties by External User:

If External User is a corporation or a limited liability company, External User warrants, represents, covenants, and agrees that it is duly organized, validly existing and in good standing under the laws of the state of its incorporation or organization and is duly authorized and in good standing to conduct business in the State of Texas, that it has all necessary power and has received all necessary approvals to execute and deliver the Agreement, and the individual executing the Agreement on behalf of External User has been duly authorized to act for and bind External User.

26.0 Conflict of Interest:

External User and each person signing on behalf of External User certifies, and in the case of a sole proprietorship, partnership or corporation, each party thereto certifies as to its own organization, under penalty of perjury, that to the best of their knowledge and belief, no member of University’s Board of Regents, nor any employee or person, whose salary is payable in whole or in part by University, has direct or indirect financial interest in the award of the Agreement, or in the services to which the Agreements relates, or in any of the profits, real or potential, thereof.

27.0 Access to Public Information:

External User is required to make any information created or exchanged with University pursuant to the Agreement, and not otherwise excepted from disclosure under the Texas Public Information Act, available in PDF or other format that is accessible by the public at no additional charge to University. External User acknowledges that University may be required to post a copy of the fully executed Agreement on its internet website in compliance with Section 2261.253(a)(1), *Texas Government Code*.

28.0 Confidentiality:

During the course of the work and/or services to be provided under this agreement, External User may come in contact with confidential information of University. External User agrees to treat as confidential the information or knowledge that becomes known to External User during performance of this agreement and not to use, copy, or disclose such information to any third party unless authorized in writing by University. This provision does not restrict the disclosure of any information that is required to be disclosed under applicable law. External User shall promptly notify University of any misuse or unauthorized disclosure of its confidential information and upon expiration of this agreement shall return to University all confidential information in External User’s possession or control. External User shall further comply with all University information security policies that may apply.

29.0 Contracts with Foreign Terrorist Organizations Prohibited:

Pursuant to Section 2252.152, *Texas Government Code,* and to the extent applicable, External User hereby represents, verifies, and warrants that it does not do business with Iran, Sudan, or any foreign terrorist organization identified on a list prepared and maintained under Section 806.051, 807.051, or 2252.153, *Texas Government Code.*

30.0 Trafficking of Persons:

Under Section 2155.0061, *Texas Government Code,* External User certifies that the individual or business entity named in the bid or Agreement is not ineligible to receive the specified Agreement and acknowledges that the Agreement may be terminated and payment withheld if this certification is inaccurate.

31.0 Cybersecurity Training Certification:

In accordance with Section 2054.5192, *Texas Government Code,* if External User, or a subcontractor, officer, or employee of External User, will have access to a state computer system or database, then External User shall ensure that such officer, employee, or subcontractor shall complete a cybersecurity training program certified under Section 2054.519, *Texas Government Code,* as selected by University. The cybersecurity training program must be completed by such officer, employee, or subcontractor during the term of the contract and during any renewal period. External User shall verify to University completion of the program by each such officer, employee, or subcontractor.

32.0 Force Majeure:

Neither party hereto will be liable or responsible to the other for any loss or damage or for any delays or failure to perform arising out of or caused, directly or indirectly, by circumstances beyond its reasonable control including act of God, strikes, epidemics, war, riots, flood, fire, sabotage, governmental authority, or any other circumstances (“Force Majeure Occurrence”). Provided, however, in the event of a Force Majeure Occurrence, External User agrees to use their best efforts to mitigate the impact of the occurrence so that University may continue to provide mission critical services during the Force Majeure Occurrence.

**IN WITNESS WHEREOF**, the authorized representatives of the parties have executed this agreement and it is effective as of the date of last signature below.

**UNIVERSITY**  **EXTERNAL** **USER**

By: By

(Signature) (Date) (Signature) (Date)

(Printed Name) (Printed Name)

(Title) (Title)

**UNIVERSITY SPONSOR                                 COLLEGE**

By: By

(Signature) (Date) (Signature) (Date)

(Printed Name) (Printed Name)

(Title) (Title)