

Texas State University

Facility Use Agreement

Agreement Date:

Organization:

Facility:

Date(s) of Use:

Event:

This document reflects the agreement between Texas State University (“Texas State”) and the Organization named above for use of the facility on the dates of use.

1. Terms and Conditions

- 1.01 Texas State grants the Organization permission to use its facility on the dates of use and for the event set forth above. The Organization agrees to use Texas State’s facility according to the terms of this agreement. This permission to use the facility does not include administrative offices in the facility or the concession areas, which will be operated by Texas State’s representatives.
- 1.02 The Organization will pay Texas State for use of the facility as set forth in Exhibit A, attached to this agreement and made a part of it for all purposes.
- 1.03 Organization agrees to pay Texas State University all final charges within seven (7) days of receipt of an invoice for such charges. Failure to do so will constitute a material breach of this agreement and will result in cancellation of your reservation by Texas State University and forfeiture of any deposits or funds paid to date.
- 1.04 If Organization requests in writing, Texas State will arrange, at Organization’s expense, security, police, ushers, ticket takers, and other personnel as Texas State deems necessary. Organization may use volunteer or paid staff other than those furnished by Texas State except for physical plant personnel and university police which Texas State may provide as Texas State deems necessary.
- 1.05 Organization may not sublease or allow any other person or organization to use the facility under this agreement without Texas State’s prior written consent.
- 1.06 If Organization does not give Texas State written notice that it intends to cancel this agreement _____ days prior to the event, Organization will forfeit any

deposit and will be liable for all costs incurred by Texas State in preparation for the Organization's event. Organization agrees to pay Texas State within seven (7) calendar days of receipt of Texas State's invoice for its costs incurred in preparation for Organization's event.

Texas State reserves the right to cancel this agreement for cause. Such cause defined as breach of this agreement, conduct or behavior by Organization which would impugn Texas State's reputation, integrity, standing, goodwill, or which would otherwise show Texas State University in a bad light.

1.07 Except as otherwise provided, neither Organization nor Texas State, shall be liable to the other for any delay in, or failure of performance, of a requirement contained in this agreement caused by Force Majeure, incidents of force majeure will include but not limited to the following: acts of God, strikes, epidemics, war, riots, flood, fire, sabotage, or any other circumstances of like character. The existence of such causes of delay or failure shall extend the period of performance until after the causes of delay or failure have been removed, provided the non-performing party exercises all reasonable due diligence to perform.

2. Insurance and Indemnification

2.01 Organization will purchase and maintain during the event public liability and property damage insurance in at least the minimum amounts of: \$1,000,000 per occurrence and \$3,000,000 aggregate. The insurance will name Texas State and the Texas State University System as an additional named insured. Organization will provide Texas State with evidence of such insurance before the event and at any other time that Texas State may request.

2.02 **ORGANIZATION RELEASES THE TEXAS STATE UNIVERSITY SYSTEM BOARD OF REGENTS, THE TEXAS STATE UNIVERSITY SYSTEM, TEXAS STATE UNIVERSITY, AND THEIR RESPECTIVE REGENTS, EMPLOYEES, AGENTS, AND OFFICERS (HEREAFTER REFERRED TO IN THIS PARAGRAPH AS RELEASEES) FROM ANY AND ALL CLAIMS AND CAUSES OF ACTION OF ANY KIND WHATSOEVER, INCLUDING BUT NOT LIMITED TO CLAIMS AND CAUSES OF ACTION FOR PERSONAL INJURY, INCLUDING DEATH, PROPERTY DAMAGE, LOSS OF USE AT COMMON-LAW , STATUTORY, OR OTHERWISE, KNOWN OR UNKNOWN, NOW EXISTING OR THAT MIGHT ARISE HEREAFTER, DIRECTLY OR INDICRECTLY ARISING FROM THE ORGANIZATION'S USE OF THE FACILITY PURSUANT TO THIS AGREEMENT.**

2.03 **ORGANIZATION WILL AND DOES HEREBY AGREE TO INDEMNIFY, PROTECT, DEFEND WITH COUNSEL APPROVED BY TEXAS STATE,**

AND HOLD HARMLESS TEXAS STATE UNIVERSITY, THE TEXAS STATE UNIVERSITY SYSTEM AND THEIR REGENTS, OFFICERS, DIRECTORS, ATTORNEYS, EMPLOYEES, REPRESENTATIVES AND AGENTS (COLLECTIVELY "INDEMNITEES") FROM AND AGAINST ALL DAMAGES, LOSSES, LIENS, CAUSES OF ACTION, SUITS, JUDGMENTS, EXPENSES, AND OTHER CLAIMS OF ANY NATURE, KIND, OR DESCRIPTION, INCLUDING REASONABLE ATTORNEYS' FEES INCURRED IN INVESTIGATING, DEFENDING OR SETTLING ANY OF THE FOREGOING (COLLECTIVELY "CLAIMS") BY ANY PERSON OR ENTITY, ARISING OUT OF, IN CONNECTION WITH, OR RESULTING FROM THIS AGREEMENT OR THE ORGANIZATION'S USE OF THE FACILITY, TO THE EXTENT CAUSED, IN WHOLE OR IN PART, BY THE ACTS, OMISSIONS, OR WILLFUL MISCONDUCT OF ORGANIZATION, OR IT AGENTS, EMPLOYEES, SUBCONTRACTORS, SUPPLIERS OR ANYONE DIRECTLY EMPLOYED BY ORGANIZATION OR ANYONE FOR WHOSE ACTS ORGANIZATION MAY BE LIABLE. IN ADDITION, ORGANIZATION WILL INDEMNIFY, PROTECT, DEFEND WITH COUNSEL APPROVED BY UNIVERSITY, AND HOLD HARMLESS THE INDEMNITEES FROM AND AGAINST ALL CLAIMS ARISING FROM INFRINGEMENT OR ALLEGED INFRINGEMENT OF ANY PATENT, COPYRIGHT, TRADEMARK OR OTHER INTELLECTUAL PROPERTY RIGHTS ARISING OUT OF, IN CONNECTION WITH, OR RESULTING FROM THIS AGREEMENT OR THE ORGANIZATION'S USE OF THE FACILITY. THE PROVISIONS OF THIS SECTION WILL NOT BE CONSTRUED TO ELIMINATE OR REDUCE ANY OTHER INDEMNIFICATION OR RIGHT, WHICH ANY INDEMNITEE HAS, BY LAW OR EQUITY. IN THE EVENT OF LITIGATION, UNIVERSITY AGREES TO COOPERATE REASONABLY WITH ORGANIZATION. ALL PARTIES WILL BE ENTITLED TO BE REPRESENTED BY COUNSEL AT THEIR OWN EXPENSE.

3. Facility

- 3.01 Organization accepts the facility "as is." Neither Texas State nor its representatives have made promises with respect to the facility except as set forth in this agreement.
- 3.02 Organization will leave the facility in the same condition as it was when the Organization began its use, except for normal wear and tear. The Organization will use the facility only for the purposes described herein. The Organization will not alter the facility in anyway, including but not limited to driving nails, hooks, tacks, or screws into the facility, without Texas State's prior written consent. If the facility suffers property damage from any cause during the Organization's use of the facility, the Organization will, at Texas State's option, either repair the

damage or pay Texas State the amount necessary for Texas State to repair the facility. Organization agrees that Texas State will determine the monetary amount necessary to repair the facility. Organization agrees to pay Texas State within seven (7) calendar days of receipt of Texas State's invoice for repairs to facility.

- 3.03 Texas State will provide lighting, heating, cooling, electrical power, water, and normal custodial services. However, if Texas State is unable to provide any of these due to circumstances beyond its control, such inability will not be a breach of this agreement.
- 3.04 Texas State will clean the Facility at Organization's expense after Organization's use, but Organization will remove its equipment and property from the Facility within 24 hours after the Event.

4. General Provisions

- 4.01 This document reflects the only agreement between Texas State and Organization regarding this subject. It supersedes any prior written or oral agreements and can be amended only by a subsequent writing signed by both Texas State and Organization.
- 4.02 This Agreement and all claims arising from this Agreement shall be interpreted and construed in accordance with the laws of the State of Texas, without regard to its conflict of laws principles. Any judicial action or proceeding between the parties relating to this Agreement and all claims arising from this Agreement shall be brought in the federal or state courts serving Hays County in the State of Texas.
- 4.03 The dispute resolution process provided for in Chapter 2260 of the Texas Government Code shall be used to resolve a dispute arising under this Agreement.
- 4.04 Notwithstanding any provision of this contract, nothing herein shall be construed as a waiver by Texas State University of its constitutional, statutory or common law rights, privileges, immunities or defenses. To the extent the terms of this paragraph conflicts with any other provision in this contract, the terms of this paragraph shall control.
- 4.05 Nothing in this Agreement permits Organization to use any of Texas State University's logos and or trademarks and Organization understands and agrees that such use is strictly prohibited.

Organization understands and agrees that Texas State is not sponsoring the event to be held in its facility by Organization. Organization is prohibited from

referencing Texas State University as a sponsor of the event in any form of marketing or media, including websites, social media and print media.

The University may immediately terminate this agreement in the event of a breach of this provision by the Organization. This provision shall remain in effect after the termination or expiration of this Agreement.

4.06 Organization agrees to indicate in all printed materials that neither Texas State University System nor Texas State University sponsor or endorse the event to be held in its facility by Organization.

4.07 The Organization will not permit alcoholic beverage at the facility during the Organization's use, and will not permit a nuisance at the facility.

4.08 Organization agrees that it will ensure that all its Employees, Subcontractors and Agents whose duties bring them upon Texas State's premises will obey the rules and regulations that are established by Texas State University and the Texas State University System and will comply with reasonable directions Texas State's representatives may give to Organization.

Organization is responsible for acts of its Employees, Subcontractors and Agents while on Texas State's premises. Accordingly, Organization agrees to take all necessary measures to prevent injury and loss to persons and property located on University's premises.

4.09 University strictly adheres to all statutes, court decisions and the opinions of the Texas Attorney General with respect to disclosure of public information under the Texas Public Information Act, Chapter 552, Texas Government Code. Organization is required to make any information created or exchanged with the state pursuant to this contract that is not otherwise excepted from disclosure under the Texas Public Information Act, available in a format that is accessible by the public at no additional charge to the state. The following format(s) shall be deemed to be in compliance with this provision: electronic files in Word, PDF, or similar generally accessible format.

4.10 Organization agrees to comply with all University Policies including but not limited to the following and, at a minimum, shall apply to the Organization's employees, subcontractors, and agents while on the Texas State campus:

- a. On-campus driving and parking;
- b. Prohibition on smoking or tobacco use;
- c. Fire safety;
- d. Hazardous Materials;
- e. Drug-free workplace; and,

- f. Prohibition of sexual harassment, or harassment or discrimination based on race, color, national origin, veteran's status, age, sex, religion, disability, sexual orientation, gender identity or expression.

All University Policies and Procedures Statements may be viewed at <http://www.txstate.edu/effective/upps/>

4.11 In their execution of this agreement the parties and others acting by or through them shall comply with all federal and state laws prohibiting discrimination, harassment, and sexual misconduct. To the extent not in conflict with federal or state law, the parties agree not to discriminate on the basis of race, color, national origin, age, sex, religion, disability, veterans' status, sexual orientation, gender identity or gender expression. Any breach of this covenant may result in termination of this agreement.

4.12 Organization will provide representation that it has conducted the following background checks on its officers, employees, or other persons it causes to be on the campus:

- a. Sex offender and criminal history databases where the above individuals will be placed on the campus, working with or around students;
- b. Criminal history and credit history background checks where the above individuals will be handling money, informational technology, or other security-sensitive areas as determined by University;
- c. Organization will not knowingly assign any individual to provide services on University's premises who has a history of criminal conduct unacceptable for a university campus or healthcare center, including violent or sexual offenses.

Organization will provide University a letter signed by an authorized representative of Organization certifying compliance with this Section.

4.13 Camps with Minors. In accordance with Texas Education Code, Section 51.976, all camps with minors in attendance must ensure that all staff and volunteers have undergone a criminal background check and have taken a certified training program on child abuse and molestation awareness. Proof of compliance with the requirements of Texas Education Code, Section 51.976, is required 7 business days prior to the first day of the camp. Organization agrees that is solely responsible for ensuring full compliance with the requirements of Texas Education Code, Section 51.976.

Certification must be completed by visiting the following link: <https://sa.txstate.edu/childprotection/>

A camp staff roster must be completed and submitted to Chris Thompson, ct1118@txstate.edu, no less than one week prior to the start of the camp. Only

individuals that appear 1) on the roster and 2) on the database of certification completion may work the camp and/or come into contact with minors.

A daily roster of participating camp employees must be submitted following the camp.”

4.14 Any notices required by the Agreement shall be sent to:
If to Texas State:

Attention: _____

Email: _____

If to Organization:

Attention: _____

Email: _____

4.15 In accordance with Texas Education Code Section 51.9335 (h), any Contract for the acquisition of goods and services to which an institution of higher education is a party, a provision required by applicable law to be included in the Agreement or Contract is considered to be a part of the executed Agreement or Contract without regard to:

- a. Whether the provision appears on the face of the Agreement or Contract;
or
- b. Whether the Agreement or Contract includes any provision to the contrary.

4.16 Pursuant to Section 2270.002 of the Texas Government Code, Organization certifies that either (i) it meets an exemption criteria under Section 2270.002; or (ii) it does not boycott Israel and will not boycott Israel during the term of this contract. Organization shall state in this contract any facts that make it exempt from the boycott certification.

Event Sponsor/ Organization

By: _____ Date: _____

Texas State University

By: _____ Date: _____

