UNIVERSITY OF SOUTH ALABAMA
MITCHELL CENTER

USE AGREEMENT

This agreement is made and entered into this _____ day of _____, _____ by and between:

Contact Name: _____

Group: _____

Address: _____

City: _____ State: _____ Zip Code: _____

Telephone: _____ Fax number: _____

EID#: _____

hereinafter referred to as "Client," and the University of South Alabama, a public body corporate of the State of Alabama located in Mobile, Alabama, hereinafter referred to as "University."

WITNESSETH

Whereas, Client intends to sponsor, promote, conduct, and host an Event (as outlined below) at the USA Mitchell Center ("Mitchell Center"); and in consideration of mutual promises herein and the benefits accruing to each of them, the parties hereby agree as follows:

I. USE OF PREMISES

The University hereby grants Client permission to use the areas agreed to and noted of the Mitchell Center and associated facilities:

Facility Area: _____

Purpose of Event: _____

Day(s) and Date(s): _____

Start Time of Event: _____

Ending Time of Event: _____

Move in Time: _____

Move out Time: _____

Names of Artists or Activity: _____

University expressly reserves the right to limit, in its sole discretion, the use of University facilities to only events that do not compete with or conflict with the University's educational or healthcare mission. University expressly reserves for its own use and excludes from the Facility Area, all offices, supply rooms, equipment rooms, storage rooms, and other similar non-public spaces. University does not relinquish and does hereby retain the right to control the management of the entire Mitchell Center and to enforce all necessary and proper rules for the management and operation of the facility. The Facility Manager, assistants, and others authorized by them may enter all of the premises, including the areas rented to Client, at any time and on any occasion.

This Use Agreement includes heat, air conditioning, and water as may be reasonably needed in the above-described Facility Area(s) and any designated dressing rooms (maximum of six), unless otherwise indicated in this agreement.

II. COST AND PAYMENT TERMS

1. **Use Fee** – Client agrees to pay the greater of (1) _____; or (2) ____ % (capped at $_____) of gross Ticket Office receipts after the payment of taxes (state and local) as rental for use of the Facility Area.

2. **Ticket Office Expenses** – In addition to the Use Fee described above, Client agrees to pay the sum of three percent (3%) of gross event ticket sales generated by credit and/or bank cards and a one and 50/100 dollars ($1.50) per ticket fee for each ticket sold and/or processed. Ticket trades, in which a ticket is used to barter for other goods or services (e.g., advertising, equipment, etc.), will incur a one and 50/100 dollars ($1.50) per ticket fee for ticket printing and services.

   University will sell tickets only at the advertised prices. A facility debt service fee of four and 00/100 dollars ($4.00) will be added to the price of all sold tickets. In addition, an online convenience fee of one and 00/100 dollar ($1.00) will be added to the price of all tickets sold via online sales. These fees are charged directly to the ticket purchaser and are not deemed an expense of the Client.

3. **Event Staffing / Building Expenses** – In addition to the Use Fee, Client agrees to pay Event-related and building expenses as listed on **Addendum I** attached to this agreement. The number and service category of persons used to provide the services listed on Addendum I shall be determined by University in the exercise of its sole discretion and shall be provided by University at the expense of Client notwithstanding any limitations stated elsewhere in this Use Agreement. Client acknowledges that conditions occurring immediately preceding, following, or during the named Event may result in the necessity of additional security and/or law enforcement officers, in the sole discretion of the University, and Client agrees to reimburse University for any such additional special services.

4. **Payment Terms** - Client agrees to a deposit of $_____ upon the execution of this agreement. The University reserves the right to demand an additional deposit if, within ten (10) calendar days prior to the Event, receipts do not cover projected expenses for the Event. The University reserves the right to cancel the Event if additional deposits are not received as requested.

   The balance of the above-described Use Fee is due immediately at the conclusion of each event. Upon conclusion of the Event, a settlement report will be prepared by the University, and payment is due before Client leaves the Mitchell Center. All payments shall be made in cash, certified check, or cashier's check payable to the University of South Alabama. The obligation of Client with respect to the payment amount shall survive the expiration or early termination of the Use Agreement.

   Should Client default in the performance of any of the terms and conditions of this Use Agreement, the University, at its option, may terminate the same. Any deposit paid to the University shall be retained by the University and shall be considered as payment of liquidated damages.

   Client shall also pay to University the additional sum of $_____ per hour for any hour, or portion thereof, that the Event exceeds its Ending Time.

   In the event any payment is not paid within ten (10) calendar days after the listed due date, interest in the amount of ten percent (10%) per annum will be added to the amount due. In addition, Client will be responsible for all costs and fees of collection, which may be based on a percentage up to a maximum of 34% of the debt. If legal action is required to collect unpaid charges, Client will also be responsible for payment of attorney's fees and court costs.

III. INSURANCE

Client agrees to provide to University a certificate of insurance of general liability insurance in the amount of $1,000,000.00 per occurrence for use of the Mitchell Center and the Event. Said insurance must include coverage for

the participants in the event. Coverage must also include $1,000,000.00 per occurrence in property damage insurance. Client agrees to name the University as an additional insured on said insurance policy or policies. Copy of any and all certificates of insurance must be delivered to the Mitchell Center Administrative Office no later **than** _____. Client agrees that it shall report immediately to Mitchell Center Administrative Personnel, as well as to Client's insurance carrier, any and all injuries that occur on the property of the University or at the facility within 24 hours post-event.

IV. NO SPONSORSHIP BY UNIVERSITY

Client acknowledges that the Event is not sponsored, hosted, or conducted in any way by the University, and Client agrees to assume all responsibility and liability arising or resulting from all aspects of the event, including the organization, hosting, sponsorship, advertisement, and conducting of the Event. Client may not use the logos or trademarks of the University without prior written consent of the University's Director, Marketing and Communications. Client agrees that it shall not make any representations that the Event is sponsored, hosted, or conducted, in whole or part, by the University.

V. TICKETING PROCEDURES

1. **Ticketing Control** – The University will at all times have control over all aspects of ticketing, including, but not limited to, the Ticket Office, Ticket personnel, ticket receipts, and ticket outlets for all commercial public events until final settlement of the Event. The date of _____ has been scheduled for tickets to be placed on sale to the general public. All seats will be sold as **reserved seats**.

2. **Valid Contract and Technical Rider** – This agreement must be signed by Client and submitted to the administration office of the Mitchell Center **no later than _____—at 4:00 PM**. No tickets may be sold and no public announcements may be made concerning any event until this agreement has been signed by both parties, the initial deposit has been made, and a valid technical sheet specifying stage size and sound and lighting requirements has been presented to the University.

3. **Complimentary Tickets** – Complimentary tickets for the use of the University shall be limited to an amount consistent with good business practices, in the sole judgment of the University, but in any event, not more than 1% of the certified ticketing manifest.

4. **Suite Seating** – University shall retain the right to lease or sell, on a seasonal or other basis, the suites located in the Mitchell Center, and all proceeds from the use, leasing, or sales of such suites shall belong exclusively to University. Client understands that the suite and club seats are included in the seating manifests and are made available for sale to the suite owner ten (10) days prior to the scheduled on sale date.

VI. CONCESSIONS AND NOVELTY SALES

1. **Exclusive Rights** – University reserves the exclusive right to control the sale of all concessions, including food, beverages, catering, alcohol sales, parking, or other services connected with the building. All income from said concessions will be retained by the University. No free samples may be distributed at the facility without the written approval of the Mitchell Center administration. Client agrees not to violate provisions of any licensing or sponsorship agreements between the University, the Mitchell Center, and/or certain vendors or distributors.

2. **Novelty Sales** - The right to sell novelties is reserved by the University, and Client will not be permitted to sell novelties on the Mitchell Center premises (including parking areas) without prior written permission of University. University reserves the right to use an independent agency to sell novelties at its sole discretion. With the prior written permission of University, Client may sell novelties on the premises during the designated activity, provided that Client pays University _____**%** of the net proceeds (calculated as gross receipts less sales tax) derived from such sales. Payment must be made immediately following the Event. Client agrees to pay all local, state, and federal sales or use taxes arising out of the sale of such merchandise and to provide University with all necessary local, state, and federal identifications numbers concerning said taxes. Client agrees that University reserves the right to approve any item to be sold by Client, and no item may be sold by Client if University approval is denied. All inventories to be sold will be subject to University's audit prior to and immediately upon reconciliation of novelty / merchandise sales following each event during the term of the agreement.

VII. BUILDING PROCEDURES

1. **Advertising** – Client agrees that all advertising of the Event will be true and accurate. Furthermore, Client agrees that all press releases, publicity material, radio or television announcements, publications, or other public notices issued shall refer to the Mitchell Center only by the name "USA Mitchell Center." All advertising and sponsorship space in the Mitchell Center is the exclusive property of the University, and all receipts from advertising shall accrue to the University. Client agrees that it will not itself, or permit others to, hang signs, banners, or posters in front of or otherwise obscure commercial signage in the facility.

2. **Announcements** – The University reserves the right to make announcements before the performance, during intermission, or at other appropriate times during the Event. This includes audio as well as video.

3. **Intermission** – Client agrees that all public ticket-selling events will have at least one (1) intermission of not less than fifteen (15) minutes in duration.

4. **Broadcast and Recording Rights** – The University reserves the rights for television and radio broadcasts and recording origination from the facility during the term of this agreement. Should the University grant Client such privileges, the University may require payment for this right in addition to the Use Fee. Client must obtain such permission in writing prior to the broadcast date.

5. **Copyrights** - Client will assume all responsibility, including all costs arising from use of patented, trademarked, or copywritten music, materials, devices, processes, or dramatic rights used on or incorporated in the Event.

6. **Event requirements** – At least fourteen (14) calendar days before the first day of the Event, Client shall provide a full and detailed outline of all services required, including, but not limited to, staffing and lighting requirements, chair and table set-up information, utility hook-ups, and other physical services, and such additional coordinating information necessary for the successful production of the Event.

7. **Damages** – Client agrees to pay the cost of repair or replacement for any and all damages of whatever origin or nature that may have occurred during the use of the facility under this agreement. Client agrees to pay estimated damages at the time of settlement. If actual costs of repair or restoration exceed the estimate, Client agrees to make payment of the balance of the cost within ten (10) calendar days after submission of billing of such work.

8. **Right of Entry** – The University reserves the right to enforce all necessary and proper rules for the management and operation of the premises involved, including, but not limited to, the right to interrupt or terminate any performance if deemed necessary by Mitchell Center administration, at its sole discretion, in the interest of public safety or the maintenance of good order. Mitchell Center representatives may enter any premises used, at any time, and on any occasion without any restrictions whatsoever under these conditions.

9. **Lewd or Profane Behavior** –If the presentation, narrative, and/or lyrics of the artist or presenter contain profane language or lewd behavior of any type, the advertising for the Event must acknowledge that "explicit language/behavior" will be a part of the Event.

10. **Smoke Free Policy** - In accordance with local ordinance, the Mitchell Center is a smoke-free facility. Further, in accordance with policies of the University, the entire campus is a smoke-free environment. Guests and employees desiring the use of tobacco and any like product must do so in their private vehicles. The Client agrees to notify its agents, representatives, and guests of the "no smoking" policy and further agrees to assist the University in general enforcement.

11. **Catering** - All catering and catering rights are reserved by University, and Client agrees and understands that should catering be required, Client must utilize the University's food service provider, which may change from time to time but is currently ARAMARK. Client shall arrange for and pay for any catering directly with the University's food service provider, and the University shall have no obligation to place orders or render payment to the food service provider on behalf of Client, unless such an arrangement is set forth with specificity in this agreement.

12. **Sponsors –** Client is allowed to display temporary signage inside the facility after specific sponsors have been approved by University. The proposed sponsorship list must be received by Mitchell Center administration on or before _____. No sponsor signage will be allowed in the facility or on the property of the Mitchell Center that conflicts with existing exclusive advertising agreements in the categories of alcoholic beverages and soft drinks, with limited exceptions.

VIII. INDEMNITY

Client covenants and agrees to indemnify and hold harmless the University and the University's officers, administrators, employees, trustees, volunteers, and agents from and against any and all claims by or on behalf of any person, firm, corporation, or governmental authority arising out, attributable to, or in connection with the use, possession, conduct, or management of the facility and the Event or the premises adjoining the facility, including, but without limitation, any and all claims for injury or death to persons from any source, including, but not limited to, COVID-19, or damage of property. Client also covenants and agrees, at its sole cost and expense, to hold harmless the University and its officers, administrators, employees, trustees, volunteers, and agents from and against all costs, legal fees, expenses, and liabilities incurred in connection with any such claim, and any proceeding brought hereon, and upon notice from the University, Client will undertake to defend such action or proceeding by qualified counsel chosen by University. In the event Client violates any of the terms or conditions of this agreement, the University shall have, in addition to any legal recourse, the right to terminate this agreement forthwith and to enter and obtain possession of the entire facility, to remove and exclude any and all persons from the facility, all without service of notice, or resort to legal process, without legal liability on its part. The above remedies are at the University's option, and the election by University of any right or remedy will not prevent the University from exercising any other right or remedy.

IX. COPYRIGHTED MATERIAL

Client warrants that all copyrighted material to be performed during any use of the Mitchell Center will be duly licensed or authorized by the copyright owners or their representatives, and Client agrees to indemnify and hold USA harmless from any and all claims, losses, damages, or expenses incurred with regard thereto. Client shall pay all of USA's costs and expenses, including reasonable attorneys' fees, incurred in defense of or as a result of any claims respecting copyrights and related matters.

X. COMPLIANCE WITH LAWS

Client shall comply with all laws of the United States and the State of Alabama, all ordinances of the City of Mobile, and all applicable rules and regulations of the police and fire departments and other municipal authorities of the City of Mobile. Client will obtain and pay for all necessary permits and licenses and will neither do, nor suffer to be done, anything on said premises during the term of this agreement that violates any applicable laws, ordinances, rules, or regulations. If the attention of Client is called to any such violation on said premises, Client will immediately desist from and correct such violations.

XI. LOSS OF OR DAMAGE TO PROPERTY

Client assumes responsibility for property placed in the facility, and Client hereby releases and discharges the University from any and all liability for any loss, injury, or damage to person or property, including death, that may be sustained by reason of use or occupancy of the facility or the premises adjoining the facility that are related to the Event or are otherwise arising under, connected with, or related to the Use Agreement. Client assumes all risk of damages to and/or loss of property of Client due to theft or otherwise, and the University and its officers, administrators, employees, trustees, volunteers, and agents are expressly released and discharged from any and all liability for such loss, including in the receipt, handling, care, or custody of property of any kind shipped or otherwise delivered to the facility either prior to, during, or subsequent to the use of the facility by Client.

XII. FORCE MAJEURE

This agreement is terminable by either party should circumstances beyond the control of the Client or University render the performance of this Event impossible. Such circumstances include, but are not limited to: sickness, pandemic, epidemic, strike, riot, accident or disaster, disruption of public transportation, storm or other severe weather conditions, intervening illegality, or closing of the venue due to energy shortages, inadequate electrical power, destruction, or other cause rendering the venue unsuitable for Client on the time and date specified. It is agreed that

neither of the parties to this agreement will be held responsible for damages for reasons of postponement or cancellation of this event due to force majeure events. Circumstances that render this event more difficult than originally contemplated or that requires performance at a loss of profit will not qualify as force majeure events. Both parties bear the risk of unanticipated contingencies rendering performance of this event difficult but not impossible. Should cancellation for any of the above-enumerated circumstances become necessary, the canceling party shall document in writing the circumstances resulting in the cancellation and send the same to the non-canceling party within forty-eight (48) hours after the initial notice of cancellation. Upon cancellation, Client shall reimburse the University for all costs expended or accrued as of time of cancellation.

XIII. SUBLETTING AND ASIGNMENT

Client shall not assign the agreement, or any part hereof, or allow any use of said premises other than as specified herein without the written consent of Mitchell Center administration. The University shall retain the right to approve contractors, service personnel, technicians, decorators, and other contracted services, people, or agencies employed by Client.

XIV. TERMINATION

The University shall have the right to withdraw and terminate permission herein given at any time if the Client breaches or fails to comply with or abide by any of the terms and conditions herein stated. Upon any such termination, Client shall promptly vacate the facility. Client further agrees that in the event of such termination, the University shall have no liability for any direct or consequential damages or loss that Client may suffer or incur as a consequence of such termination. The University shall retain the right to cause the interruption of any performance in the interest of public safety and to likewise cause the termination of such performance when, in the sole judgement of the facility staff, evacuation of the premises is necessary due to reasons of public safety or other compelling interest. Client will be allowed use of the premises for sufficient time to complete presentation of the Event without additional rental charge providing such time does not interfere with another client. If, at the discretion of facility administration it is not possible to complete the Event, Client shall reimburse University for all costs and expenses expended or accrued as a result thereof and the Use Fee described in section II (1) shall be forfeited, prorated, or adjusted at the discretion of facility administration based on the situation. Client waives any and all claims for damages or other compensation from the University.

XV. NOTICES

All notices, requests, demands, or other communications hereunder shall be in writing and shall be deemed to have been duly given and delivered upon personal delivery of, or if mailed, upon deposit of such notice in the United States mail, with first class postage, and

If mailed to the University, addressed to:

Arena Manager
2195 Mitchell Center
University of South Alabama
Mobile, AL 36688-0002

If mailed to Client, addressed to:

_____
_____
_____

XVI. ASSUMPTION OF RISK

An inherent risk of exposure to COVID-19 exists in any place where people gather. COVID-19 is an extremely contagious disease that can lead to severe illness and death. Client acknowledges by attending the Event, it assumes all risks, hazards, and dangers arising from or relating in any way to the risk of contracting COVID-19 or any other communicable disease or illness, or a bacteria, virus, or other pathogen capable of causing a communicable disease or illness, whether occurring before, during, or after the Event, however caused or contracted, and voluntarily waives all claims and potential claims against University, vendors, and their affiliated companies, and any of their respective

present and future subsidiaries, affiliates, partners, members, trustees, officers, directors, employees, stakeholders, agents, other representatives, successors, or assigns and their affiliated companies relating to such risks.

XVII. MISCELLANEOUS

It is further mutually agreed by and between the parties hereto that all terms and conditions of this Use Agreement and any and all addenda thereto, including the definitions and responsibilities of the parties, shall be binding upon the parties and cannot be altered by any oral representations or promises of any agent or other person of the parties hereto unless the same be in writing and mutually signed by the duly authorized agent or agents who executed this agreement. This agreement contains the entire agreement of the parties and supersedes all prior agreements or understandings, oral or written, if any, between the parties. In the event that any provision of this agreement is held to be unenforceable for any reason, the unenforceability thereof shall not affect the remainder of this agreement, which shall remain in full force and effect and enforceable in accordance with its terms. The terms of this agreement, and all matters relating hereto, shall be governed and construed under the internal laws of the State of Alabama. This agreement will not be binding until signed by an authorized representative of the University.

IN WITNESS WHEREOF, the parties have caused this agreement to be executed by their duly authorized representative. Please print or type except for signature:

CLIENT:

By: _____ _____
Signature Printed Name

_____ _____
Title Date

UNIVERSITY OF SOUTH ALABAMA:

By: _____ _____
Victor L. Cohen Date
Arena Manager

By: _____ _____
Joel Erdmann, Ph.D. Date
Director of Athletics

Addendum 1

Event-related and Building Expenses