## License Agreement for Use Of

**Suncoast Credit Union Arena at Florida SouthWestern State College**

This License (“License” or “Agreement”) made this *day* of , 20 between The District Board of Trustees of Florida SouthWestern State College, Florida ("Licensor or FSW") whose address is 8099 College Parkway, Fort Myers, Florida 33919 and **School Board of Lee County, Florida** whose address is **2855 Colonial Blvd, Fort Myers, FL 33966** ("Licensee") who may be contacted as follows: ("Licensee") who may be contacted as follows:

Contact: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Address: School District of Lee County 2855 Colonial Blvd

Fort Myers, FL 33966 Phone: 239-337-8348

E-mail: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

## WITNESSETH

1. **Licensed Space**

For and in consideration of the sum hereinafter specified, the Licensor grants to the Licensee permission for the non-exclusive use the following areas of the Suncoast Credit Union Arena at Florida SouthWestern State College (“Facility” or “Arena”): Main Arena configured for use as **\_\_\_\_\_\_\_\_\_\_** together with common space and public restroom facilities for the sole purpose of holding the **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_** ("Event”). The licensed space is defined and dates and times of use are described in the attached Fee Estimate Form and Exhibit A. This agreement specifically excludes all box suites, offices, locker rooms, fitness center, and the hospitality pavilion unless otherwise described in Exhibit A.

## Term

The term of this agreement shall be as stated in Exhibit A.

## Fees

The estimated cost for this Event as detailed on the Fee Estimate Form is **$\_\_\_\_\_\_\_\_\_\_** (“License Fee”). The License Fee consists of cost(s) to license the premises (“Facility Rental Fee”) as well as reimbursable expenses incurred for the event (“Additional Event Expenses”). Payment is due in accordance with the Payment Schedule detailed in Section 4. Licensee must bear the cost or fees for use of the FSW equipment, as well as any technical assistance deemed necessary by FSW related to the use of FSW equipment. Additional Event Expenses known prior to the event start date must be paid in advance in accordance with the Payment Schedule detailed in Section 4. Any Additional Event Expenses that arise thereafter will be reconciled upon completion of the event. These later incurred Additional Event Expenses will be listed in a supplemental invoice which will be mailed to Licensee after the event. This invoice is to be paid under this agreement 30 calendar days from the date of the invoice. The Licensee agrees to pay the Licensor the License Fee described on the attached Fee Estimate Form and Exhibit A for the uses described therein by the dates therein. Licensee agrees that the failure to pay any license fee and reimbursable expense item when due shall constitute a material breach of this agreement.

## Payment Schedule

The License Fee as detailed on the Fee Estimate Form shall be due according to the following payment schedule:

* + Initial Deposit – 50% of Facility Rental Fee (Due with signed contract)
	+ Remaining Deposit – remaining 50% of Facility Rental Fee (Due Ten (10) Business Days prior to the start date of the event.)
	+ Estimated Additional Event Expenses (Due Ten (10) Business Days prior to the start date of the event). (Including, but not limited to, rental equipment, staffing and other direct service fees.)
	+ Balance of Additional Event Expenses due upon completion of final Event Settlement within 30 calendar days following Event as described in Section 3.

|  |  |  |
| --- | --- | --- |
| DESCRIPTION | DATE DUE | AMOUNT |
| Initial Deposit - 50% of FACILITY RENTAL FEE | Due with Signed Contract | **$\_\_\_\_\_\_\_** |
| Remaining Deposit – Remaining 50% of FACILITY RENTAL FEE | Due Ten (10) Business Days Prior to the Start Date of the Event | **$\_\_\_\_\_\_\_\_** |
| Additional Estimated Event Expenses – Including, but not limited to, rental equipment, staffing and other direct service fees. | Due Ten (10) Business Days Prior to the Start Date of the Event | **$\_\_\_\_\_\_ Estimated Fee** |
| Balance of Additional Event Expenses | Due Upon Completion of a Final Event Settlement--30 Calendar Days Following the Date of the Event | TBD |

## Cancellation of Event by Licensee

In the event of a cancellation by Licensee, Licensee shall be obligated to pay the FACILITY RENTAL FEES as well as any associated cancellation fees incurred by third party vendors in accordance with the requirements outlined below. The parties agree that Licensor will be damaged by any such cancellation and that the exact amount of such damages would be either impossible or inconvenient to prove. Therefore, Licensee and Licensor agree that the Licensee shall be liable for, and shall pay to, the Licensor an amount listed herein for each such definite

 date as liquidated damages, and that the amount listed herein is a reasonable forecast of just

 compensation for the harm to the Licensor resulting from Licensee's cancellation of the Event.

The parties further agree that such amount shall constitute liquidated damages, and not a penalty of any kind. The remedies set forth in this section are in addition to, and not in lieu of, any other rights or remedies Licensor may have, at law or in equity, in the event of a breach or cancellation of this Agreement by Licensee

* + If cancellation occurs from 0 to 240 calendar days prior to Event start date, then cancellation fee equals 100% of FACILITY RENTAL FEES as well as any associated cancellation fees incurred by third party vendors; and
	+ If cancellation occurs from 241 to 365 calendar days prior to Event start date, then cancellation fee equals 75% of FACILITY RENTAL FEES. Licensee will be responsible for the full amount of any associated cancellation fees incurred by third party vendors.

Neither party to this Agreement shall be liable for delays or failures in performance under this Agreement (other than obligations relating to payment, confidentiality, and protection of ownership and intellectual property rights) resulting from acts or events beyond the reasonable control of such party (“Force Majeure Event”), including acts of war, terrorism, acts of God, earthquake, flood, embargo, riot, sabotage, labor dispute, governmental act, failure of the internet, power failure, or energy, utility, or telecommunications interruptions, provided that the delayed party: (i) gives the other party prompt notice of such cause; and (ii) uses its reasonable commercial efforts to promptly correct such failure or delay in performance. In the event that a Force Majeure Event lasts for more than 90 days, and the delayed cannot correct its failure or delay in performance during that period of time, despite using its reasonable commercial efforts to do so, the other party may terminate the affected portions of this Agreement.

## Deposit

A non-refundable deposit is due and payable to Licensor according to the payment schedule noted above. Such deposit shall be credited to the License Fee. Licensee shall not be entitled to the payment of any interest whatsoever on the deposit paid to Licensor. If the deposit (or any portion thereof) is not paid on or before the due date(s) specified in the payment schedule, the Facility is not licensed and Licensor may license the space to another entity.

## Event Requirements

Licensee shall provide to Licensor all necessary set-up instructions (personnel, equipment, utilities, layout, etc.) for the Event no later than twenty-one (21) days prior to the start date of the Event (or, if this Agreement is executed and delivered less than 21 days from the start date of the event, then immediately upon execution hereof). If such instructions are not provided to Licensor by such date, or if changes are made to such instructions after they have been provided to Licensor and Licensor incurs additional costs or expenses as a result of such changes, Licensee shall be responsible for such additional costs and expenses at Licensor's prevailing rates.

For events closing later than 11:59pm, an additional charge of $200.00 per hour or a fraction thereof will be charged for events held in the Arena.

## Deliveries

Licensor will not accept any deliveries or freight shipments prior to the Event move-in date. The Licensee’s designated on-site representative is responsible for receipt of any and all deliveries.

For GPS purposes, the address of the Suncoast Credit Union Arena at Florida SouthWestern State College is 13351 FSW Pkwy, Fort Myers, FL 33919.

## Parking

Both Parties agree to the following:

* + The Licensee will have use of surface parking in Lot 17 for the duration of the Event.
	+ The Licensee recognizes that these special arrangements do not constitute a license to violate parking rules and regulations at FSW.
	+ If the Licensee establishes VIP parking or charges for parking in Lot 17, they will provide the Licensor a minimum of 2 parking spaces per box suite, with a maximum option of 10 per suite, as needed at no additional cost.

## Accessibility

FSW as the owner of the Facility will, to the extent required by law, be responsible for ensuring that FSW’s premises comply with the physical accessibility guidelines or the Americans with Disability Act. Any additional costs for special auxiliary aids requested by Licensee shall be borne by the Licensee. It shall be the Licensee’s sole responsibility to ensure that any special assistance or other accommodations are provided for its disabled guests, invitees, and employees such as the provision of interpreters, attendants, and simultaneous videotext display.

## Control of Facility

In occupying the building, property, and/or grounds at the Facility, Licensee understands that Licensor does not relinquish the right to control the management thereof, and to enforce all necessary laws, rules, and regulations. Notwithstanding the foregoing, Licensee shall be responsible for providing all equipment, labor, materials and goods for the operation of the Event except as otherwise expressly set forth in this agreement and Exhibit A.

## Building and Fire Code Compliance

Licensee shall furnish necessary floor plans for this Event for approval. No decorations shall be placed in or on the building, walls, and corridors without the prior written consent and approval of Licensor. All decorations, set, scenery, or other property shall be flameproof material and must meet the requirements of the Florida State Fire Safety Code. Licensee understands that the State law jurisdiction over fireworks / pyrotechnic displays rests with the State and local fire Marshal and accordingly Licensee understands that Licensor cannot permit fireworks / pyrotechnic displays anywhere within the facility, unless Licensee first obtains the prior written approval and permit from the Fire Marshal having jurisdiction and the State Fire Marshal. The amount and content of Licensee's display material in the building shall be at the discretion of the Licensor.

## Compliance with Laws and Regulations

Licensee shall observe and comply with all laws, statutes, ordinances, rules or regulations of the Government of the United States, State of Florida, County of Lee, and all College Operating Procedures and Board Policies. Licensee shall obtain at its own expense all licenses required and pay all taxes that shall accrue as a result of this Event, including Florida State sales tax, if applicable.

Licensee shall not bring onto FSW premises any material, substance, equipment, or object which is likely to endanger the life or cause bodily injury to any persons on the premises or which is likely to constitute a hazard to the property. Licensor shall have the right to refuse to allow such material, substance, equipment, or object to be brought onto its premises and further, to require its immediate removal if found on its premises.

All portions of sidewalks, entries, doors, passages, halls, corridors, stairways and all ways of access to public utilities on FSW’s premises shall be kept unobstructed by Licensee and shall not be used for any purpose other than ingress or egress to and from the premises by the Licensee.

## Media

Licensor retains the right to use photographs and references to the Event for archival purposes as well as promotion of Licensor's Arena, currently named Suncoast Credit Union Arena at

Florida SouthWestern State College. This right is retained by Licensor and shall survive any name change of the Arena located at 13351 FSW Pkwy, Fort Myers, FL 33919.

Licensee shall not advertise any of its activities in the Arena in any manner deemed objectionable by the Licensor. Advertising signs on Licensor’s premises must have prior approval of the Licensor as to size, number, quality, content, location and method of hanging. By such permission, however, the Licensor does not accept responsibility in any manner for content. Licensor will remove any unauthorized signs at Licensee's expense.

## Event Advertising

Licensee agrees that it will be responsible for all advertising of this Event and that such advertising will be honest and true and will include correct information on event times, place, ticket prices, and artists performing. All advertising for Events held at the Arena shall refer to the venue as "The Suncoast Credit Union Arena at Florida SouthWestern State College."

Licensee’s use of any Licensor’s name, marks, and seal must be separately licensed, in accordance with Licensor’s College Operating Procedures. Licensee agrees to make all advertising and promotional material available upon request of FSW. Licensee agrees to discontinue and correct any advertising and announcements of the Event being presented by the Licensee which Licensor determines in its sole discretion to be dishonest, misleading, untruthful, containing incomplete information, damaging to the reputation of Licensor, or which does not accurately convey the date(s) of such activity, the type of admission (general admission or reserved) and the correct ticket price.

## Liability

1. **Licensor Premises**

The Licensee, its employees, agents, contractors, subtenants, volunteers, and invitees are responsible for the proper use and care of any FSW property. The Licensee is responsible for the replacement costs of any FSW property which is damaged destroyed or lost due to the intentional or negligent acts of Licensee, its employees, agents, contractors, subtenants, volunteers, and invitees.

To the extent allowable by law, the Licensee shall indemnify and hold harmless the District Board of Trustees Florida SouthWestern State College, Florida, its trustees, employees, officers, and volunteers, as well as the Florida SouthWestern State College Foundation, the Florida SouthWestern State College Financing Corporation and their respective parent and affiliated companies and their respective Successors or Assigns, directors, volunteers, officers and employees as now or hereafter may be constituted from and against all liability (statutory or otherwise) claims, suits, demands, judgments, costs, interest and expense (including but not limited to, attorney's fees and disbursements) arising from any injury to or death, of any person or persons or damage to property (including loss of use thereof) relating to:

* 1. Use of FSW premises by Licensee, or its agents, contractors, employees, subtenants, volunteers, licensees or invitees;
	2. Any work done or any condition created (other than by Licensor) by or on behalf of the Licensee in or about FSW premises due to or resulting from any default or breach by the Licensee in the operation of this License;
	3. Any condition of the premise due to or resulting from any default or breach by the Licensee in the operation of this License;
	4. Any acts, omissions, willful misconduct or negligence of the Licensee or its agents, contractors, employees, subtenants, volunteers, licensees or invitees;

Provided however that the obligation to indemnify shall not apply to the extent that such liability (statutory or otherwise) claims, suits, demands, judgments, costs, interest and expense arises out of the negligence or acts of the Licensor. Licensee shall maintain all required insurance coverage throughout the term of the License Agreement and any extensions thereto. The minimum limits of required insurance coverage specified in this agreement are not intended, and shall not be construed, to limit or indemnify Licensee under this License Agreement to any indemnified party or other persons. Licensee shall be responsible for all deductibles with regard to such insurance. Failure to comply with insurance requirements does not limit the Licensee’s liability or responsibility.

## Licensee Property;

Notwithstanding the foregoing provisions of this Article, the Licensee agrees that the Licensor shall not be liable for any damage to the property of Licensee, its agents, contractors, employees, subtenants, volunteers, licensees or invitees entrusted to employees of Licensor, nor for the loss or damage to any property by theft or otherwise resulting from any cause unless claims arise from the negligence or willful misconduct of the Licensor. The Licensee agrees to remove all of its property from the Licensor’s premises by the move-out date and any of its property remaining thereafter shall be deemed abandoned. Licensee further authorizes Licensor, upon abandonment, to dispose of such property and hereby releases Licensor from any and all liability in connection therewith, after Licensor gives written notice such property is left at venue, and a reasonable opportunity to retrieve it has been given to Licensee.

The Licensee agrees that if Licensor or any of its employees should receive or handle on behalf of the Licensee, or others associated with this Event, property of any kind shipped or otherwise delivered to Licensor’s premises either prior to, during, or after the use of the premises by Licensee hereunder, Licensor shall act solely for the accommodation of the Licensee; and neither Licensor nor its officers, agents, or employees shall be liable for any loss, damage, or injury to such property.

The Licensee agrees that during the term hereof it shall carry insurance against loss or damage by fire or other casually upon any of its property or equipment in or upon FSW’s premises, that such insurance shall contain a clause whereby the insurer waives its right of subrogation against the District Board of Trustees of Florida SouthWestern State College, Florida, the Florida SouthWestern State College Foundation, the Florida SouthWestern State College Financing Corporation and their respective successors or assigns, directors, officers, volunteers, and employees. The Licensor will not carry insurance on the properties of the Licensee, its agents, contractors, volunteers, employees, subtenants, licensees or invitees.

## Licensor Property;

Licensee shall not injure, mar nor in any way deface Licensor’s remises or equipment contained therein and shall not cause or permit anything to be done whereby the Licensor’s premises or equipment therein shall be in any manner injured, marred, or defaced. Licensee agrees to make physical inspection upon termination or conclusion of this Agreement and to acknowledge the condition of the Licensor’s premises revealed by such inspection in writing. Licensee further agrees to reimburse the Licensor for any amount necessary to restore Licensor’s premises used in the conduct of the Event to the same condition as when the Licensee took occupancy with normal wear and tear taken into consideration, and hereby authorizes Licensor to deduct

said amount from funds of Licensee held by Licensor. If Licensee's funds held by Licensor are insufficient to cover the amount thereof, then Licensee agrees to pay the difference to Licensor.

## Insurance Requirements

Licensee’s insurance shall cover the licensee’s entire operation while under contract with the College, shall include coverage for its agents, contractors, employees, subtenants, and volunteers, and shall be valid throughout the effective period of the contract. The coverages and minimum limits required are the perceived risks associated with the activities of the contracting party, but in no way limits the liability of the Licensee.

Licensee, at its sole expense, shall obtain and keep in full force and effect during the Event, the following types and amounts of insurance with an insurance carrier or carriers with a Best’s Rating of "A-" or better and a Financial Size Category of "VII" or better according to the latest edition of Best’s Key Rating Guide, published by A.M. Best Company, duly registered with the Secretary of State and authorized to conduct business in the State of Florida:

**INSURANCE REQUIREMENTS FOR EVENTS HELD AT SUNCOAST ARENA AT FSW**

# Type of Policy Limits

**Commercial General Liability** – ISO CG 001 Form or equivalent. $1,000,000 per occurrence

$2,000,000 aggregate\*

Personal/Advertising Injury $1,000,000

Damage to Rented Property $1,000,000

Products/Completed Operations Broad Form Property Damage $1,000,000 Medical Payments (any one person) $5,000

**Automobile Liability** including all:

Any Auto $1,000,000 CSL

Personal Injury Protection Statutory

**Worker’s Compensation\*\*** Statutory

Limits per Florida Statute 440 including Employer’s Liability

**Excess/Umbrella Liability** (when requested) $1,000,000\* Coverage should be as broad as primary.

**Sexual Abuse & Molestation Liability (when requested)** $1,000,000 per occurrence

$2,000,000 aggregate\*

**Alcohol Liability (when requested)** $1,000,000 per occurrence

$2,000,000 aggregate\*

\*Required insurance limits may be increased, depending on the number of anticipated attendees at each event and if the Licensor deems additional coverage is warranted under Licensee’s operations.

\*\*If Licensee employs four (4) or more employees, full-time or part-time, employees, Workers' Compensation insurance, including employer's liability, complying with the statutory requirements of the State of Florida

# Your certificate of insurance must include the following:

Insurance Requirements should be met by insurers that meet a minimum A.M Best Company rating of A- VII.

* FSW shall be added as an Additional Insured on the Commercial General Liability policy.
* The Certificate Holder and **Additional Insured** shall be listed on the ACORD 26 Certificate as follows:

District Board of Trustees, Florida SouthWestern State College, Florida, its trustees, employees, officers, and volunteers

Attn: Risk Management 8099 College Parkway Fort Myers, Florida 33919

Licensee shall cause all insurance policies required hereunder to: (a) name The District Board of Trustees of Florida SouthWestern State College, Florida, its trustees, employees officers and volunteers as additional insureds (except with respect to the Workers' compensation insurance policy); (b) provide that no material change, cancellation or termination of such policies shall be effective until at least thirty (30) days after receipt of written notice thereof by Operator; (c) include a waiver of subrogation rights in favor of Licensor and the other Indemnified Parties; (d) be primary to all other coverage Operator and the other Indemnified Parries may have; and (e) not require that Operator or the other Indemnified Parties pay or be liable for any premiums or deductibles with respect to such insurance. The Certificate of insurance meeting Licensor’s requirements outlined above shall be presented with the signed contract in order to execute.

*At least thirty (30) days prior to commencement of the Term, Licensee shall furnish Licensor with a certificate of insurance evidencing the insurance coverage required under this agreement.*

## Copyright

In the event that Licensee makes use of copyrighted music for public performance during the Event then Licensee shall be responsible for obtaining all licenses necessary for and shall assume all costs arising out of the presentation of the Event including, but not limited to American Society of Composers, Authors, and Publishers (ASCAP), Broadcast Music, Inc. (BMI) and all other similar licenses for the activity.

Licensee assumes full responsibility for any copyright infringements and all charges that may occur on account of activities at Facility pursuant to this License, and warrants that all copyrighted material to be performed has been duly licensed and authorized by the copyright owners or their legal representatives, and agrees to indemnify and hold harmless the District Board of Trustees of Florida SouthWestern State College, Florida, its trustees, employees, officers, and volunteers, as well as the Florida SouthWestern State College Foundation, the Florida SouthWestern State College Financing Corporation and their respective parent and affiliated companies and their respective Successors or Assigns, directors, volunteers, officers and employees, as now or hereafter may be constituted, from any and all claims, losses, or expenses incurred with regard thereto. Licensee, upon request, shall provide Licensor with written proof before the Event that all copyright provisions and laws have been satisfied by Licensee or some other party. Licensor reserves the right to contact owners of copyrights to inform them of the pendency of the event and to inquire whether appropriate copyright fees

have been paid. If these fees have not been paid and Licensor is informed of a claim which could or will result from the event contemplated by Licensee in this License, the Licensor shall have the right to withhold from the box office receipts a sum of money sufficient to satisfy any such claims and shall have the right to pay such amounts to the holder(s) of the copyright(s).

## Non-Assignment

Licensee shall not assign or attempt to sell or assign this License or any rights hereunder without the expressed prior written consent of the Licensor. Such action shall terminate this License and any and all payments received shall be retained as liquidated damages by the Licensor; and in addition, thereto, Licensee shall be liable to the Licensor for any and all loss or damages occasioned to the Licensor as a result of said action. No rights or privileges granted herein shall pass to any assigns for the benefit of creditors or to the referee, trustee or assigns in bankruptcy, or become a part of the estate of the bankrupt; and in the event of any assignment, or in the bankruptcy of the Licensee, Licensor may cancel all of the rights and privileges granted herein.

## Right of Entry

Facility employees and officials shall have the right at all times to enter upon Licensor’s premises licensed by the Licensee in the performance of their duties. The Licensee agrees that if notified by any law enforcing agency that the condition or any part of FSW’s premises occupied by the Licensee or the facilities thereof is unsatisfactory, Licensee will immediately remedy the condition. The Licensor will waive this right to enter specified areas which will be mutually agreed upon with Licensee. Any waiver of the Right of Entry does not relinquish control of said areas to Licensee.

## Food and Beverage Concessions

Licensee agrees that Licensor reserves the sole right to operate and receive all income from food and beverage concessions, without the necessity of Licensee's approval, including but not limited to food and beverage and vending machine operation for the Event(s) covered by this License. Licensor agrees that Licensee may sell programs and Event related clothing, souvenirs and memorabilia and retain the proceeds of any sales. Licensee shall be solely responsible for all costs associated with such sales.

## Unavoidable Happenings

In case it becomes impractical to hold the event due to causes beyond the control of the Licensor, including but not limited to, a national emergency resulting from war or by order of the United States Government or the State of Florida, County of Lee, or the South Trail Fire District acting in an emergency police power capacity, or because of Acts of God, storm, fire, flood, earthquake, roof collapse, labor disturbances (including strikes, boycotts, lockouts, etc.) order, rule or regulations, disruption of postal, electrical, telephone or other utility service, or any other cause or contingency beyond the control of the Licensor, the License may be terminated by either party upon written notice to the other by hand delivery, fax or registered mail, in which event both parties shall be relieved of any responsibility under this License; except that in the event that the Licensee has made payment to the Licensor under terms hereof, the Licensor shall refund to the Licensee any such sums deposited less any actual costs incurred by the Licensor in making preparation for the event described in this License.

## Default

Notwithstanding any provisions contained herein, it is mutually agreed that in the event of default, nonconformance or breach on the part of the Licensor, the liability of the Licensor shall be limited to repayment of the amount paid by the Licensee for the paid day, occasion or time.

## Objectionable Person

Licensor reserves the right to eject or cause to be ejected from its premises any objectionable person or persons; and neither Licensor or any of its officers, agents, or employees shall be liable to Licensee for any damages that may be sustained by Licensee through the exercise by Licensor of such right. Licensee agrees not to discriminate in its use of FSW’s premises among law-abiding members of the public when the event is open to the public.

## Notices and Written Addendum(s)

All notices and orders given to Licensee may be served by mailing to the Licensee's address herein set forth, or by delivering a copy thereof to the Licensee in person, or by leaving it at his place of business in the Facility with any person then in charge. It is understood and agreed by and between the parties hereto that no verbal representation or promise of any nature, not covered by this License has been made by either party to the other, and that any agreements not provided for in the printed section of this License will be covered by an addendum, and incorporated into this Agreement only upon receipt of signature by both parties.

## Prohibited Practices

Licensee shall use and occupy said Premises in a safe and careful manner. Licensee shall not in all or any part of the Facility:

1. Cause or produce any unusual, noxious, or objectionable smokes, gases, vapors, or odors;
2. Use any part for lodging or sleeping;
3. Overload any floor, ceiling, wall, gridiron, hanging equipment, or any other fixtures therein;
4. Place any additional lock of any kind or change any lock upon any window or door of Facility, unless expressly permitted in writing to do so and unless a key therefore is maintained by the Facility;
5. Do or permit any act or thing on facility premises which might invalidate any insurance policies required under this Agreement;
6. Do or permit the interference with the effectiveness or accessibility of building mechanical systems (including lines, pipes, wires, conduits, and equipment), concession stands, public areas, elevators and escalators or to the streets and sidewalks;
7. Do or permit the Premises to be used for unlawful or immoral purposes or in any manner as to injure or threaten injury to persons or property, in or near the Premises covered by this License; said Licensee shall not do any act, or suffer any act to be done during the terms of this License which will in any way mar, deface, or injure and any part of the Facility; and,
8. In the use of the facility to conduct all of its activities without regard to race, color, religion, national origin, ethnicity, sex, age, marital status, veteran status, sexual orientation, genetic information, or disability of any individual.

## Determination of Disputes

In the event that any dispute arises in the interpretation or the performance under the terms of this License, it is understood and agreed by and between the parties that the exclusive venue

 for the resolution of such disputes shall be in a court of competent jurisdiction situated in Lee County, Florida and that the parties expressly agree that EACH OF THE PARTIES HERETO IRREVOCABLY WAIVES ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.

## Evacuation of Facility

Should it become necessary in the judgment of the Licensor to evacuate its premises because of a bomb threat or for other reasons of public safety, the Licensee will retain possession of the Premises for sufficient time to complete presentation of his activity without additional rental charges providing such time does not interfere with another Facility use. If it is not possible to complete presentation of the activity, License fees shall be forfeited, prorated, or adjusted at the discretion of the Licensor based on the situation, and the Licensee hereby waives any claim for damages or compensation from the Licensor.

## Emergency Medical Support

Licensee agrees that it shall be solely responsible for the arranging for the presence of appropriate medical personnel staff for the Event.

## Interruption or Termination of Event or Show

The Licensor shall retain the right to cause the interruption of any Event in the interest of public safety, and to likewise cause the termination of such Event when in the sole judgment of the Licensor such act is necessary in the interest of public safety.

## Advertising/Sponsorship

Licensor shall have exclusive right to procure agreements with third parties regarding advertising / sponsorships which are displayed in or on the Facility on a permanent basis. Licensee may procure Event sponsors and display the event sponsor names provided that event sponsor signs or banners shall not obscure the display of permanently affixed advertising

/ sponsorships; provided that, notwithstanding the forgoing, Licensor shall afford Licensee locations for the display of a reasonable number of banners for the Event, in a manner which is consistent with the Licensor’s guidelines for The Suncoast Credit Union Arena at Florida SouthWestern State College.

## Equal Opportunity

Florida SouthWestern State College, an equal access institution, prohibits discrimination in its employment, programs and activities based on race, sex, gender, age, color, religion, national origin, ethnicity, disability, pregnancy, sexual orientation, marital status, genetic information or veteran status. The College is an equal access/equal opportunity institution. Questions pertaining to educational equity, equal access, or equal opportunity should be addressed to Title

IX Coordinator/Equity Officer, 8099 College Parkway, Fort Myers, Florida 33919, equity@fsw.edu, 239.489.9051 or to the Assistant Secretary for Civil Rights, United States Department of Education.

## License

This License is void and of no force in effect unless fully executed by both the Licensee and the Licensor. This License represents the dates listed herein only and does not guarantee any future dates, holds or prices with the Arena.

The Suncoast Credit Union Arena at Florida SouthWestern State College does not guarantee any exclusive rights to any types of shows.

## Safety and Security

The licensee agrees that it must bear the cost or fees for the use and presence of FSW Police Officers, Community Service Technicians, or a combination thereof for the Event. Police Officers/Community Service Technicians are at all times subject to the policies, rules and regulations governing employees of the Florida Southwestern State College Campus Police Department (FSWPD). A Licensee has no authority over FSWPD personnel and is restricted to providing only a general assignment of duties to be performed. Those rules **never** supersede FSWPD policy or procedures and Police Officers/Community Service Technicians should be so advised. Police Officers/Community Service Technicians remain under the exclusive control of the FSWPD and are accountable for strict adherence to FSWPD rules and regulations. Any conflicting rules of Licensee Police Officers/Community Service Technicians will be disregarded. The Police Officers/Community Service Technicians shall refuse to perform any duties deemed to be in conflict with the guidelines established by the FSWPD. As determined by the FSWPD, Police Officers/Community Service Technicians may be recalled to on-duty status at any time for emergency operations.

FSWPD Police Officers/Community Service Technicians are **not** permitted to receive cash from customers for any reasons. FSWPD reserves the right to require a minimum number of extra-duty employment officers for assignment to certain extra-duty assignments. There shall be a minimum assessment of four (4) hours on all assignments requiring less than that amount of time.

Licensee who wish to cancel FSWPD Police Officers/Community Service Technicians request are required to give a minimum of twenty-four (24) hours’ notification of cancellation to the Licensor during normal business hours. Licensee failing to give the required notification of cancellation of the FSWPD Police Officers/Community Service Technicians shall be charged a minimum of four (4) hours at the standard hourly rate.

1. **Severability**

If any provision of this Agreement is held to be invalid, illegal, or unenforceable by a court of competent jurisdiction, such provision shall be deemed severable from the remainder of this Agreement, which shall remain in full force and effect to the fullest extent permitted by law. The invalidity, illegality, or unenforceability of any provision shall not affect the validity, legality, or enforceability of any other provision of this Agreement.

## Public Records

The Parties recognize and agree that the Licensee and the Licensor are subject to the provisions of the Florida Records Law, under Chapter 119, Florida Statutes. The Parties shall comply with Florida’s Public Records Laws and agree to keep and maintain public records in accordance with Florida law and records retention schedules. Further, the Parties will ensure records that are exempt or confidential from public records disclosure requirements are not disclosed except as authorized by law.

## Communication with Licensee

All Communications and notices to Licensee shall be directed to:

With Copy to:

Office of Legal Services

Attn: School Board Attorney and General Counsel

2855 Colonial Blvd.

Fort Myers, Florida 33966

And

Office of the Superintendent

Attn: Superintendent

2855 Colonial Blvd.

Fort Myers, Florida 33966

## Communication with College

All communications and notices to the Licensor shall be directed to:

Jason Dudley

Vice President IT & Digital Strategies/Chief lnformation Officer

Florida SouthWestern State College 8099 College Parkway

Fort Myers, Florida 33919

Phone: (239) 985-8368

E-Mail: Jason.Dudley@fsw.edu

The following items are required for this contract to be executed: (1) Proof of insurance as described in Section 17 of this document; (2) Two signed, original copies of the contract returned in their entirety; and (3) a deposit made payable to Florida SouthWestern State College.

In Witness whereof, the parties have affixed their signatures as follows:

## THE SCHOOL BOARD OF LEE COUNTY DISTRICT BOARD OF TRUSTEES,

 **FLORIDA SOUTHWESTERN STATE COLLEGE, FLORIDA**

BY: BY:

|  |  |
| --- | --- |
| Samuel FisherTITLE: Chair DATE:  | Jason Dudley TITLE: Vice President IT & Digital Strategies/Chief lnformation OfficerDATE:  |

BY:

Kenneth Savage Ed. D. TITLE: Superintendent of Schools DATE:\_\_

APPROVED AS TO FORM

AND LEGAL SUFFICIENCY:BY:

Kathy Dupuy-Bruno,

TITLE: School Board Attorney and General Counsel

Please return two (2) originally signed agreements to: Florida SouthWestern State College

Attn: Auxiliary Services 8099 College Parkway

Fort Myers, Florida 33919

Exhibit A

* Date(s) of event:

Move In:

Move Out:

* The licensed space shall include main arena, common space, public restrooms and the Follett Hospitality Pavilion.
* Licensee may not advertise for event until License Agreement is fully executed and Facility Rental deposit has been made.
* Licensor will provide janitorial support on a daily basis for the Facility at the rate detailed on the Fee Estimate Form.
* Licensor will provide support for College owned information technology equipment and infrastructure.
* Licensor will provide event supervision in the capacity of on-site enforcement of facility policies throughout the event.
* Licensee will have exclusive responsibility for ticketing for the event, if applicable, including, without limitation, land-based sales and internet sales and sole responsibility for all costs associated with such activities.
* Licensee is responsible for all event operations including, but not limited to practice sessions, rehearsals, programming, security and VIP parking lots.
* In the event that the Licensee elects to establish a VIP Parking area, then Licensee shall be responsible for the labor costs and the staffing management associated with the VIP Parking.
* Licensee will provide all contact information and timelines for all equipment deliveries and pickups, including but not limited to chairs, tables, linens, staging and catering companies.
* Licensee may not make any changes to rental equipment orders, including but not limited to tables, linens, and vendor booths 30 business days prior to event date.
* Licensee is providing all necessary equipment for their event, including but not limited to tables, chairs, linens, staging, décor, lighting, and catering.
* Helium balloons are not permitted in the Arena.
* All beverages served or sold must be Pepsi product.