



**HOSPITALITY SUITE USE AGREEMENT**

This agreement made and entered into this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_, between the University of South Alabama, whose official address is 307 University Boulevard, Mobile, Alabama 36688 (the “UNIVERSITY”), and \_\_\_\_\_, whose official address is \_\_\_\_\_, (the “CLIENT”).

**WITNESSETH**

**Whereas**, UNIVERSITY has constructed hospitality suites at the concourse level of the Mitchell Center (the “CENTER”), located at the UNIVERSITY, consisting of an enclosed room fully described hereinafter (each a “Hospitality Suite”); and

**Whereas**, CLIENT desires to obtain an agreement to use one of the said Hospitality Suites; and

**Whereas**, CLIENT understands and agrees that the agreement is granted for the purpose of permitting CLIENT to view from the Hospitality Suite and the eleven (11) seats in front of the Hospitality Suite.

**Now, therefore**, UNIVERSITY and CLIENT agree as follows:

**1. Term**

UNIVERSITY hereby grants CLIENT a license to use Hospitality Suite number \_\_\_\_\_ at the CENTER for a term commencing November 1, 20\_\_\_, and ending October 31, 20\_\_\_, under the terms and conditions set forth herein.

**2. Use Fee and Method of Payment**

CLIENT agrees to pay UNIVERSITY the sum of \$\_\_\_\_\_ per contract year for \_\_\_\_\_ ( ) years as a fee for use of said Hospitality Suite, with each such payment being due on November 1 of each contract year. CLIENT shall also be required to purchase eleven (11) tickets to UNIVERSITY’s home basketball games. CLIENT agrees that no portion of the amount paid pursuant to this agreement shall be refundable.

### **3. Scope and Purpose of Use Agreement**

A. CLIENT understands and acknowledges that UNIVERSITY makes no warranties, guarantees, or representations regarding the number of events other than UNIVERSITY basketball games that will be held in the CENTER. CLIENT further understands and agrees to abide by the rules and regulations governing the CENTER, which are incorporated herein by reference and subject to change at any time at the discretion of UNIVERSITY.

B. In the event that UNIVERSITY, its successors, and its assigns discontinue playing any of its collegiate basketball games at the CENTER, then CLIENT shall have the option to cancel this agreement. CLIENT may exercise the option to cancel this agreement within sixty (60) days after receipt of written notice from UNIVERSITY that UNIVERSITY intends to discontinue playing any of its collegiate basketball games at the CENTER. Upon such cancellation, the unused balance of any advanced use fees shall be returned to CLIENT after deduction for any obligations of CLIENT to UNIVERSITY under this agreement or to others for food, beverages, or services furnished to CLIENT. The unused balance of any advanced use fees shall be calculated pro rata based on the number of home basketball games remaining during the term of this agreement compared to the number of total home basketball games during the term of the agreement. This right of cancellation shall be the sole and exclusive remedy available to CLIENT for any other claims or damages of any nature whatsoever as result of the circumstances giving rise to the right of cancellation.

C. Additional Events. For special events at the CENTER and those basketball games to which season ticketholders are admitted, University shall ensure that CLIENT shall have the right of first refusal to purchase from UNIVERSITY up to eleven (11) tickets in the row of eleven (11) seats immediately in front of the agreed upon Hospitality Suite. If CLIENT desires to exercise this right, CLIENT must purchase such tickets at least four (4) weeks in advance of such event. The ticket price for each seat shall be established by the promoter of the particular event but in any case shall not be more expensive than the most expensive seat at the CENTER which is not a Hospitality Suite. If CLIENT does not exercise its option to purchase tickets for an additional event, the Hospitality Suite shall remain closed during that additional event and UNIVERSITY may sell tickets to the eleven (11) otherwise reserved seats. Should CLIENT'S seats be blocked by event production, equivalently priced seats will be made available for purchase.

D. CLIENT shall not be entitled to use Hospitality Suite for events not open to the general public unless CLIENT has received express permission from UNIVERSITY and from the agent leasing the CENTER from UNIVERSITY for the event in question.

E. CLIENT agrees to make Hospitality Suite available for use by UNIVERSITY for commencement activities, if necessary, and other non-ticketed faculty, staff, and student functions upon UNIVERSITY providing CLIENT with a sixty (60) day written notice of said use. For these functions, the UNIVERSITY will pay CLIENT a rental fee of \$\_\_\_\_\_ per event. After each UNIVERSITY event during which CLIENT does not have

use of the Hospitality Suite and the accompanying reserved seats, UNIVERSITY agrees to return the Hospitality Suite to CLIENT in the same condition as existed immediately prior to UNIVERSITY's event, less normal wear and tear. UNIVERSITY shall be responsible for all damage to the Hospitality Suite during such UNIVERSITY event, so long as such loss or damage was not caused by negligence of CLIENT or CLIENT's agents, employees, and/or invitees. In September of each year, UNIVERSITY shall inspect the Hospitality Suite to determine its condition. Another inspection shall take place after UNIVERSITY events during which UNIVERSITY had access and use of the Hospitality Suite to determine what damage, if any, occurred to the Hospitality Suite during the event. If UNIVERSITY chooses to institute legal proceedings against any third party deemed responsible for such damage, CLIENT agrees to subrogation of its claim to UNIVERSITY to the extent of the cost of repairs made by UNIVERSITY.

F. Hospitality Suites shall be available for use by CLIENT for UNIVERSITY basketball games when the doors of the CENTER are open to the public and until thirty (30) minutes after the end of the last game of a given day. For all other events to which CLIENT has the right to use Hospitality Suite, pursuant to the terms of this agreement, Hospitality Suite shall be available for use by CLIENT when the doors of the CENTER are open for admission to the event in question or at whatever time may be prescribed by the agent leasing CENTER from UNIVERSITY until thirty (30) minutes after the conclusion of the event.

#### **4. Premises**

A. UNIVERSITY at its own cost and expense agrees to provide the following:

(1) An enclosed room (Hospitality Suite) at the Concourse Level of the CENTER measuring approximately thirteen (13) feet in width by approximately nineteen (19) feet in depth, containing a polished bare concrete floor, two side walls approximately nine (9) feet in height with front wall with glass window and door, a rear wall approximately nine (9) feet in height containing a locking door, and an unfinished ceiling cavity.

(2) Ordinary repairs and ordinary maintenance to the Hospitality Suite.

(3) The cost of water, heat, and electricity.

B. CLIENT agrees to improve, decorate, keep clean, and furnish the Hospitality Suite under the following terms and conditions:

(1) CLIENT agrees to reimburse UNIVERSITY for all additional modifications performed at CLIENT's request and at UNIVERSITY's initial expense, over and above any specifications agreed by the parties to be at UNIVERSITY's sole expense.

(2) CLIENT agrees to pay to UNIVERSITY a reasonable clean-up fee for

cleaning the Hospitality Suite. CLIENT shall provide its own trash receptacle for the Hospitality Suite, with the minimum size being thirty (30) gallons. UNIVERSITY will remove trash from the Hospitality Suite only after the completion of the day's events.

(3) Improvements and decoration of the floor and walls of the Hospitality Suite may be made by CLIENT at its own expense, provided such improvements and decorations conform to all local and state building and fire codes and have been approved in advance in writing by UNIVERSITY.

(4) CLIENT may elect to furnish Hospitality Suite in a manner of its own choice at its own expense, provided all furnishings conform to all local and state fire codes. There shall be no modification to any doors, glass, or permanent features of the Hospitality Suite.

## **5. Parking**

During the term of this agreement, CLIENT shall be entitled to two (2) free parking permits in a designated preferred parking area for each UNIVERSITY collegiate basketball game.

## **6. Food, Beverages, and Catering Services in Hospitality Suites**

CLIENT shall be solely responsible for and promptly pay to the proper person, agent, or corporation all bills for food, beverage, and services furnished, sold, or rendered in connection with the use of Hospitality Suite, including all applicable taxes, if CLIENT elects to use such available services. UNIVERSITY'S caterer will have full service available, and **no other contract caterer** will be allowed in Hospitality Suite. No food or alcoholic or non-alcoholic beverages shall be brought into the Hospitality Suite that are not provided by UNIVERSITY'S caterer. No alcoholic beverages shall be served to minors.

## **7. Proper Decorum; Advertising**

A. CLIENT and invitees of CLIENT shall at all times maintain proper decorum while using the Hospitality Suite and shall abide by all terms and conditions of this agreement, applicable governmental laws, rules, and regulations, and by such rules and regulations as may from time to time be adopted and applied by UNIVERSITY to use of CLIENT'S Hospitality Suite and to the use of all CENTER Hospitality Suites, including rules and regulations which may be established for any and all events regarding the consumption of alcoholic beverages. CLIENT shall not use the Hospitality Suite in any manner that would constitute waste, nuisance, or unreasonable annoyance to occupants of adjacent Hospitality Suites. Flagrant or repeated violations of rules and regulations may result in the cancellation of this agreement within ten (10) days of the receipt of written notification from UNIVERSITY of said cancellation.

B. CLIENT may not display advertising, logos, or slogans of any business, including CLIENT's business, if any, without prior written approval of UNIVERSITY, which will not be unreasonably withheld. Notwithstanding the foregoing, CLIENT understands and agrees that it will not display any offensive or lewd advertisements, logos, or slogans. CLIENT further understands that it may not be allowed to display any advertisements, logos, or slogans that may violate the terms of UNIVERSITY's sponsorship or advertising agreements with third parties.

## **8. Taxes**

The parties hereto agree that this agreement creates no possessory interest that would be subject to property taxes; provided, however, that should this agreement be made subject to any tax relating solely to the use of Hospitality Suite by CLIENT, such tax shall be the sole obligation of CLIENT.

## **9. Condition of the Hospitality Suite**

A. CLIENT hereby accepts the Hospitality Suite in the condition existing as of the date of possession hereunder.

B. Before commencing any work relating to the improvements affecting the Hospitality Suite, CLIENT shall notify UNIVERSITY in writing of the expected date of commencement thereof and agree to reschedule should there be a conflict with a UNIVERSITY-scheduled event. UNIVERSITY will have the right to approve all work schedules by contractors hired by CLIENT. CLIENT'S contractor will agree to prompt waste removal, and no storage of equipment/supplies outside of room. It will be necessary for CLIENT to obtain all necessary permits, if applicable, prior to any work being done to Hospitality Suite. UNIVERSITY shall then have the right at any time and from time to time to post and maintain in or on the Hospitality Suite such notices as UNIVERSITY reasonably deems necessary to protect the subject property and UNIVERSITY from mechanic's liens, material liens, or any other liens. In any event, CLIENT shall pay, when due, all claims for labor or materials furnished to or for CLIENT at or for the use in the Hospitality Suite. CLIENT shall not permit any mechanic's or material liens to be levied against the Hospitality Suite, the CENTER, or UNIVERSITY, for any labor or materials furnished to CLIENT or claimed to have been furnished to CLIENT, or to CLIENT'S agents or contractors in connection with the work of any character performed or claimed to have been performed in or on the Hospitality Suites by or at the direction of CLIENT.

C. All alterations, improvements, or additions which may be made in the Hospitality Suite shall become the property of UNIVERSITY and remain upon and be surrendered with the Hospitality Suite at the expiration of the term. Notwithstanding the provisions of this document, CLIENT may remove any of its personal property and equipment which are affixed to the Hospitality Suite.

D. On the last day of the term hereof, or upon any sooner termination, CLIENT

shall surrender the Hospitality Suite to UNIVERSITY in good, clean, and safe condition. CLIENT shall repair damage to Hospitality Suite by CLIENT'S use thereof and remove any of CLIENT'S personal property and equipment therein.

#### **10. Liability Insurance**

CLIENT shall obtain and keep in force during the term of this agreement, a policy of comprehensive general liability insurance in the amount of one million dollars (\$1,000,000.00) each loss/two million dollars (\$2,000,000) annual aggregate for the use of Hospitality Suite and CENTER. During the term of this agreement, CLIENT shall also maintain a property damage policy of \$50,000.00. Proof of such insurance naming UNIVERSITY as **additional insured** must be current and on file in the Administrative Offices of CENTER prior to occupancy.

#### **11. Release and Indemnification**

A. UNIVERSITY shall not be liable for any loss or damage to property of CLIENT or its invitees in the Hospitality Suite or upon UNIVERSITY premises other than any loss or damage resulting from the gross negligence or willful misconduct of UNIVERSITY or UNIVERSITY'S employees, representatives, or agents. CLIENT hereby voluntarily assumes any and all risks associated with use of the Hospitality Suite, including, but not limited to, the possibility of exposure to COVID-19, and releases UNIVERSITY and its officers, trustees, employees, and agents, from any and all liability for damages, suits, costs, or expenses (including reasonable attorneys' fees) incurred by CLIENT that are or may be related to this agreement or use of the Hospitality Suite.

B. CLIENT agrees to indemnify, defend, and hold UNIVERSITY harmless from any liability for damage, including personal injury and property damage, occurring in the Hospitality Suite or upon UNIVERSITY premises occasioned by any act or omission, neglect, or wrongdoing of CLIENT or any of its directors, officers, agents, representatives, guests, employees, or other invitees.

#### **12. CLIENT'S Option Rights**

Provided that CLIENT is not in breach of this agreement, CLIENT shall have the right to enter into a new agreement upon the normal expiration of the term of this agreement, provided that CLIENT notifies UNIVERSITY of CLIENT's intent to exercise its renewal option at least ninety (90) days prior to the normal expiration of the term of this agreement. Upon receipt of CLIENT's notice of intent to exercise its renewal option, UNIVERSITY shall send a new use agreement to CLIENT for execution in substantially the same form as this use agreement in all material respects. CLIENT shall sign and return said use agreement to UNIVERSITY within thirty (30) days of receipt thereof. Should CLIENT fail to return the new signed agreement to UNIVERSITY within the thirty (30) day period set forth in this paragraph, then CLIENT's renewal option shall automatically expire and CLIENT shall have no further claim to the use of said Hospitality Suite beyond the normal expiration of the term

of this agreement.

**13. Default**

Should CLIENT fail to pay any sums when due hereunder, or if CLIENT or CLIENT's guests fail to comply with or perform any other material term, covenant, or condition hereof, UNIVERSITY may terminate this agreement and proceed against CLIENT for the recovery of all damages incurred by UNIVERSITY as a result of the breach by CLIENT. Without limiting the foregoing, in the event CLIENT fails to timely pay any amounts due hereunder, such overdue balances shall accrue interest in the amount of one and one-half percent (1.5%) per month (or the maximum amount allowed by law, whichever is lower) from the due date until paid. In addition, CLIENT shall reimburse UNIVERSITY for all costs and expenses, including reasonable attorneys' fees, incurred by or on behalf of UNIVERSITY occasioned by, related to, arising out of, or in connection with any default by CLIENT under this Agreement.

**14. Limitation of Liability**

**IN NO EVENT WILL UNIVERSITY OR ANY OF ITS OFFICERS, TRUSTEES, EMPLOYEES, CONTRACTORS, OR AGENTS BE LIABLE FOR EXEMPLARY, SPECIAL, INCIDENTAL, INDIRECT, PUNITIVE, OR CONSEQUENTIAL DAMAGES OF ANY KIND, UNDER ANY LEGAL THEORY, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR CLIENT'S USE OF THE HOSPITALITY SUITE, INCLUDING, BUT NOT LIMITED TO, PERSONAL INJURY, PAIN AND SUFFERING, EMOTIONAL DISTRESS, LOSS OF REVENUE, LOSS OF PROFITS, LOSS OF BUSINESS, BUSINESS INTERRUPTION, OR ANTICIPATED SAVINGS, LOSS OF USE, LOSS OF GOODWILL, AND WHETHER CAUSED BY TORT (INCLUDING NEGLIGENCE), BREACH OF CONTRACT, OR OTHERWISE, EVEN IF FORESEEABLE AND EVEN IF CLIENT HAS BEEN ADVISED OR SHOULD HAVE BEEN AWARE OF THE POSSIBILITY OF SUCH DAMAGES. FURTHER, IN NO EVENT SHALL THE TOTAL AGGREGATE LIABILITY OF UNIVERSITY TO CLIENT OR HIS/HER GUESTS FOR ALL DAMAGES, LOSSES, AND CAUSES OF ACTION (WHETHER IN CONTRACT OR TORT, INCLUDING, BUT NOT LIMITED TO, NEGLIGENCE OR OTHERWISE) ARISING FROM OR IN CONNECTION WITH THIS AGREEMENT OR USE OF THE HOSPITALITY SUITE EXCEED, IN THE AGGREGATE, THE AMOUNT PAID BY CLIENT TO UNIVERSITY FOR CLIENT'S USE OF THE HOSPITALITY SUITE.**

**15. Discrimination**

In its performance under the agreement, CLIENT shall not by reason of race, color, religion, sex, disability, age, marital status, or national origin, discriminate against any person and shall comply in all respects with any and all applicable federal, state, county, and municipal laws relative to human rights and discrimination.

## 16. Miscellaneous

A. Right of Entry - UNIVERSITY and its employees and agents shall have the continuing right to enter CLIENT'S Hospitality Suite at any and all times for the performance of duties required to be performed by UNIVERSITY hereunder.

B. Sale of Tickets Prohibited - CLIENT shall not sell, or offer for sale, any event admission tickets or parking tickets issued to CLIENT.

C. Governing Law - This agreement shall be governed, construed and interpreted in all respects in accordance with the laws of the State of Alabama.

D. Entire Agreement - This agreement constitutes the entire agreement and supersedes any previous agreements, written or oral, between the parties hereto, and no change or modification hereof shall be effective unless the same shall be in writing and executed by the parties hereto.

E. Captions - The captions of this use agreement are for convenience only, are not to be construed as part of this agreement, and shall not be construed as defining or limiting in any way the scope or intent of the provisions hereof.

F. Partial Invalidity - In the event that any portion of this agreement shall be invalid under applicable existing laws, then such portions are to be modified in the letter and spirit of this agreement to the extent permitted by applicable law so as to be rendered valid. Any portions of this agreement which are invalid under applicable law shall not render this agreement or any other part thereof invalid, but such invalid portions shall be inapplicable until the parties hereto have made appropriate changes in accordance with applicable laws to achieve the spirit of the invalid provisions.

G. Non-waiver of Strict Compliance - Failure of UNIVERSITY to require strict compliance by CLIENT of any of the covenants, provisions, or conditions of this agreement, on one or more occasions, shall not constitute a waiver by UNIVERSITY of the right thereafter to require strict compliance with said covenants, provisions, and conditions.

H. Compliance with Laws - Both parties will comply with all laws and regulations applicable to its obligations hereunder.

I. Force Majeure - Neither party shall be liable to the other party for failure to perform any of the terms and conditions of this agreement when such is attributable to and caused by an act of God, by governmental authority taking possession of the CENTER, or other government rules, regulations or actions, or by any other circumstances (including but not limited to war, strikes, riots, fire, pandemics and/or civil disorder) not under the control of such party. If any such event shall cause a delay but shall not be an independent reason for cancellation of the entire agreement, the terms and conditions hereof shall be in full force



and effect. In the event, through no fault of the CLIENT, the Hospitality Suite is destroyed or otherwise unusable, as determined by mutual agreement of the Parties, CLIENT will receive a pro rata refund for the amount of time the Hospitality Suite is uninhabitable.

J. Joint and Several Liability – In the event that named CLIENT herein is composed of more than one person, or is a partnership or joint venture, the respective individuals, partners, or joint ventures comprising CLIENT shall be jointly and severally liable hereunder, whether or not the individual partners or joint ventures are signatories to the agreement.

K. Notices – All notices required hereunder will be deemed duly given if sent by certified mail to the following address:

If to CLIENT:           Contact Name  
                                  Company name.  
                                  Company Address  
                                  City, State Zip Code

If to UNIVERSITY: Mr. Victor L. Cohen  
                                  Arena Manager  
                                  University of South Alabama  
                                  5950 Old Shell Road, Suite 2195  
                                  Mobile, Alabama 36688

L. Assignment. This agreement is personal to CLIENT and may not be sold, assigned, or transferred, nor the Hospitality Suite sublet by CLIENT, without prior written consent of UNIVERSITY.

M. Effective Date. This agreement will become effective upon its execution by each of the parties hereto.

*[signature page to follow]*

IN WITNESS WHEREOF, the parties have caused this agreement to be executed by their duly authorized representatives on the date set forth below.

**CLIENT**

DATE: \_\_\_\_\_

By: \_\_\_\_\_  
Authorized Representative

**UNIVERSITY OF SOUTH ALABAMA**

DATE: \_\_\_\_\_

By: \_\_\_\_\_  
Victor L. Cohen  
Arena Manager

DATE: \_\_\_\_\_

By: \_\_\_\_\_  
Joel Erdmann, Ph.D.  
Director of Athletics

DATE: \_\_\_\_\_

By: \_\_\_\_\_  
Contract Officer