

ATTACHMENT 5

**FACILITIES USE AGREEMENT
MOTLOW STATE COMMUNITY COLLEGE**

This Facilities Use Agreement is entered into as of _____, 20__ (the "Effective Date"), between the MOTLOW STATE COMMUNITY COLLEGE ("Institution") and _____ ("User") for the use by User of certain space or facilities owned by Institution.

1. **Space.** Subject to the terms of this Agreement, Institution agrees that User may use the following Space or Space and equipment at the Institution:
(INSERT DESCRIPTION OF SPACE AND EQUIPMENT TO BE USED, e.g., Simon Hall, Room 130)
2. **Permitted Use.** User may use the Space for the following, and for no other purpose:
(INSERT DESCRIPTION OF USE ALLOWED, e.g., User may use the Space to conduct non-credit classes in ACT test-preparation)
3. **Term.** User may use the Space on the following dates and during the following hours:
(INSERT DATES AND TIMES OF USE, e.g., Each Monday and Wednesday, beginning January 1, 2012 through May 30, 2012, from 6:00 p.m. to 8:00 p.m., except for those dates during that time period that are official Institution Holidays.
4. **Compliance with Laws, Policies and Regulations.** When using the Space, User agrees to comply with all applicable state, federal or city laws and regulations, and with the policies and regulations of the Institution pertaining to the use and occupancy of the Space. User acknowledges that it has been provided with copies of the Institution's pertinent policies and regulations. User agrees to take good care of the Space and to maintain the space in as good order and condition as it was prior to User's use.

User agrees not to use or allow the Space to be used for any unlawful purpose. User agrees not to commit or allow to be committed any waste or nuisance in or about the Space, or subject the Space to any use that would damage the Space or raise or violate any insurance coverage maintained by or for the benefit of the Institution.

5. **Rental Fee.** User agrees to pay Institution a use fee of \$_____ per _____ (e.g. month, year, week) whether or not User actually uses the space. The first installment shall be payable in advance on or before the Effective Date. All subsequent payments shall be payable in advance on or before _____ (e.g. first of the month). User also shall pay when due all taxes, if any, levied or assessed against Institution by reason of this Agreement or User's use of the space (other than Institution's income taxes). All payments must be made to Institution) and sent to the address indicated in this Agreement.
6. **Insurance.** User, at its expense, agrees to procure and maintain during the term a policy of commercial general liability insurance in an amount of not less than one million dollars (\$1,000,000), single limit, against claims for bodily injury, death and property damage occurring in connection with User's use of the Space. This insurance must name the Tennessee Board of Regents, Institution and the State of Tennessee as additional insureds. User must provide Institution with a certificate evidencing this insurance coverage no later than ten days prior to User's use of the Space.
7. **Liability.** User agrees to conduct its activities in the Space in a careful and safe manner. As a material part of the consideration to Institution, User agrees to assume all risk of damage to and loss or theft of User's property while at Institution, damage to the Space, and injury or death to persons related to User's use or occupancy of the Space in, upon, or about the Space from any cause, and User waives all claims against Institution. User further agrees to indemnify and hold harmless Institution, the Tennessee Board of Regents, the State of Tennessee and their officers, regents, agents and employees, against all claims, suits, liabilities, costs, damages and expenses (including reasonable attorney's fees) arising out of or in connection with: (i) User's use or occupancy of the Space, or any activity or thing done, performed or suffered by User, its agents, its employees, Users, invitees or persons attending or participating in User's activities in or about the Space; or (ii) any loss, injury, death or damage to persons or the Space on or about the Space by reason of any act, omission or negligence of User, or any of its agents, its contractors, its employees, licensees, or invitees; or (iii) any breach or default in the performance of any obligation on User's part to be performed under the terms of this Agreement. User's indemnity obligations

will not extend to any liability to the extent it is caused by the negligence of Institution or its agents or employees.

8. **Environmental Regulations.** User will not permit any Hazardous Substance to be used, stored, generated or disposed of on, in or about, or transported to or from, the Space, by User, User's agents, employees, contractors, invitees, subtenants, concessionaires or Users without first obtaining Institution's written consent, which Institution may give or withhold in its sole discretion, or revoke at any time. If Institution consents, all Hazardous Substances must be handled at User's sole cost and expense, in compliance with all applicable state, federal or local governmental requirements, using all necessary and appropriate precautions. If User breaches these obligations, or if the presence of Hazardous Substances on, in or about the Space caused or permitted by User results in contamination of any part of the Space, or if contamination by Hazardous Substances otherwise occurs in a manner for which User is legally liable, then User will indemnify and hold harmless Institution, the Tennessee Board of Regents, and the State of Tennessee from and against any and all claims, actions, damages, fines, judgments, penalties, costs, liabilities, losses and expenses (including, without limitation, any sums paid for settlement of claims, court costs, attorneys' fees, consultant and expert fees) arising during or after the expiration or termination of this Agreement as a result of any breach or contamination. Without limitation, if User causes or permits the presence of any Hazardous Substance on, in or about the Space and this results in contamination of any part of the Space, User will promptly, at its sole cost and expense, take all necessary actions to return the Space and any adjacent facility to the condition existing prior to the presence of any Hazardous Substance; provided, however, User shall first obtain Institution's approval for any such remedial action. "Hazardous Substance" means any substance regulated by any local government, the State of Tennessee or the United States government. "Hazardous Substance" includes any material or substances which are defined as "hazardous material," "hazardous waste," "extremely hazardous waste" or a "hazardous substance" pursuant to state, federal or local government law. "Hazardous Substance" includes but is not restricted to asbestos, polychlorobiphenyls and petroleum.
9. **Assignment and Subletting.** User does not have the right to assign this Agreement or allow any other person or entity to use or occupy any of the Space without the prior written consent of Institution, which consent may be granted or withheld in Institution's sole discretion.
10. **Default.** If User fails to pay any fee or other sum required to be paid by User when due, or otherwise fails to comply with or observe any other provision of this Agreement, in addition to any other remedy that may be available to Institution, whether at law or in equity, Institution may immediately terminate this Agreement and all rights of User.
11. **Interpretation.** This Agreement constitutes the entire agreement and understanding of the parties with respect to its subject matter. No prior or contemporaneous agreement or understanding will be effective. This Agreement may not be modified or amended except by written instrument signed by both parties. This Agreement shall be governed by the laws of Tennessee, the courts of which state shall have jurisdiction over its subject matter.
12. **Relationship.** Neither User nor any personnel of User will for any purpose be considered employees or agents of Institution. User assumes full responsibility for the actions of User's personnel, and is solely responsible for their supervision, daily direction and control, payment of salary (including withholding income taxes and social security), worker's compensation and disability benefits.
13. **Authority.** The individual signing below on behalf of User hereby represents and warrants that s/he is duly authorized to execute and deliver this Agreement on behalf of User and that this Agreement is binding upon User in accordance with its terms.
14. **Non-Discrimination.** The parties agree to comply with Titles VI and VII of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, Section 504 of the Rehabilitation Act of 1973, Executive Order 11,246, the Americans with Disabilities Act of 1990 and the related regulations to each. Each party assures that it will not discriminate against any individual including, but not limited to, employees or applicants for employment and/or students because of race, religion, creed, color, sex, age, disability, veteran status or national origin.
15. **Conflicts of Interest.** The User warrants that no part of the total contract amount provided herein shall be paid directly or indirectly to an officer or employee of the State of Tennessee as wages, compensation, or gifts in exchange for acting as officer, agent, employee, subcontractor or consultant to the User in connection with work contemplated or performed relative to this Agreement.
16. **Claims Against the Institution.** Any and all monetary claims against the Institution, its officers, agents, and employees in performing any responsibility specifically required under the terms of this Agreement

shall be submitted to the Board of Claims or the Claims Commission of the State of Tennessee and shall be limited to those provided for in T.C.A. § 9-8-307.

17. **Copyrights.** If music is to be performed in conjunction with the use of the Space, the parties agree to abide by the following copyright and performance provisions:
- A. the User hereby assures that all necessary copyright and royalty licenses have been obtained from ASCAP, BMI, SESAC and any other performing rights organization or the copyright owner for the performance to be presented under the terms of this Agreement.
 - B. the User agrees to provide the Institution the prior written consent of SESAC, Inc. or the copyright owner for copyrighted music or work for which SESAC is the licensing agent.
 - C. the User agrees to indemnify, hold harmless and defend the Institution and the State of Tennessee from and against any and all claims, demands or suits which may be brought for copyright infringement allegedly arising in the course of the performance presented under the terms of this Agreement. Such indemnification shall extend to both criminal and civil actions and shall include any and all loss, damage, penalty, court costs or attorneys' fees incurred by the Institution as a result of such infringement.
 - D. the Institution shall promptly notify the User of any such claim brought against the Institution or the State of Tennessee. The settlement or compromise of any claim brought against the Institution or the state shall be subject to the approval of the appropriate state officials, as required by T.C.A. Section 20-13-103.
18. **Term.** The term of this Agreement will begin on the Effective Date and end on _____, 20____, at which time User's right to use the Space under his Agreement will automatically expire. This Agreement may be terminated earlier by either party upon ten (10) days prior written notice to the other party.

MOTLOW STATE COMMUNITY COLLEGE

(NAME OF USER)

By _____

By _____

Name _____

Name _____

Title _____

Title _____

Address

Address
