**FACILITY USE AGREEMENT**

 THIS AGREEMENT is made \_\_\_\_\_\_ , 20\_\_, between the BOARD OF TRUSTEES OF WESTERN MICHIGAN UNIVERSITY (WMU), a Michigan constitutional body corporate, on behalf of [FACILITY], located at 1903 W. Michigan, Kalamazoo, MI 49008 and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (USER) (collectively, the PARTIES) regarding the USER’s intent to use [describe property](VENUE) on [date of event] for the purposes described in Section 2, below.

1. Definitions Terms of each named PARTY include that PARTY’s governing body, employees, agents, participants, guests, successors, assigns, and any individual or entity acting on behalf of that PARTY.
2. License WMU grants USER a revocable, non-exclusive license to use VENUE for [describe purpose], which is described in greater detail in Exhibit A to this agreement (“USE”). Unless specified in this AGREEMENT, WMU will not supply goods or services of any kind related to the USE. USER agrees to pay all amounts as set forth in this AGREEMENT and in Exhibit A. USER accepts the VENUE in its condition at the time of use, “as is” and “where is,” without any further representation or warranty by WMU as to its condition, safety, or appropriateness for any activity. After USE, USER will return VENUE and equipment (if applicable) to WMU in the same condition in which they were provided, reasonable wear and tear excepted, or USER will be billed for any damages or losses.
3. Anti-Discrimination and Accommodations WMU is an Equal Opportunity institution and follows all regulations regarding the hiring and treatment of personnel under these laws. WMU has institutional Policies prohibiting discrimination. USER agrees to follow these Policies and will not limit University facility access or participation in activities on the basis of race, color, religion, national origin, sex, sexual orientation, gender identity, age, protected disability, veteran status, height, weight, or marital status.

If the USE requires accommodations in order for guests or invitees to participate effectively in the USE, USER is responsible for providing all required accommodations including any modification of the facilities or payment for interpreters.

1. Compliance with Laws USER shall comply with all applicable federal, state, and local laws, codes, ordinances, rules, and regulations, including, but not limited to, the requirements of any state or local health code or fire code. USER's failure to comply with any of the foregoing shall constitute a breach of this AGREEMENT, at which point, WMU may immediately terminate this AGREEMENT.
2. Compliance with WMU Rules USER shall abide by all of WMU's rules and regulations, and shall comply with the directions of WMU security personnel and other WMU officials including, but not limited to, the University’s prohibition of sale and consumption of alcoholic beverages on campus (unless indicated otherwise on Exhibit A) and smoking (to include electronic cigarettes). USER shall not charge admission or sell any merchandise or food on WMU property without prior written consent from WMU Office of Business and Finance or as otherwise set forth in Exhibit A.
3. Compliance with Fire and Safety Codes USER agrees not to bring onto the premises any material, substances, equipment, or objects which are likely to endanger the life of, or cause bodily injury to, any person on the premises or which is likely to constitute a hazard to WMU's property. WMU has the sole and exclusive right to determine whether such material is allowed on the premises and has the right to call for its immediate removal from the facility. Under no circumstances are flammable materials, gasoline vehicles, or use of open flames allowed.
4. Minors on Campus If minors will be participating in USE, by signing this Agreement, USER takes full responsibility for any injury or damage arising from the USE and relating to minors’ participation. USER shall indemnify and hold harmless the University from any and all liability relating to minors participating in the USE. Further, USER certifies that it has complied with all applicable federal, state, or local laws and rules relating to minors including, but not limited to, obtaining background checks for adults who will be working with Minors. The University expressly disclaims any responsibility for meeting those requirements when USER is unaffiliated with the University.
5. Responsibility for Property USER shall not behave in an unsafe, careless, or negligent manner while on WMU's property; overload or cause to be overloaded any wall, floor, ceiling, stage, bandstand, or electric wiring; or cause any act to be done that will injure or harm any person or persons or which may in any way mar, deface, or injure any WMU property.

USER will set up, install, and remove its own equipment and property at its own expense. Under no circumstances will WMU be liable for USER'S property or equipment while on WMU property or while Property is in transit to or from WMU. This limitation applies to damage, vandalism or theft to USER’s property including but not limited to damage, vandalism or theft in residence halls or to automobiles and their contents.

1. Event Space, Security, and Postings Policy Any event held on WMU’s campus must comply with the standards set forth in WMU’s Event Space, Security, and Postings Policy, which may be found at <http://wmich.edu/policies/event-space>.
2. Security Under no circumstance shall client independently provide or arrange for security. WMU’s Department of Public Safety (DPS), in conjunction with VENUE management, will evaluate the safety and security needs for all events taking place at the VENUE. If WMU decides that security staff, police, or fire personnel must be present at the event, WMU DPS will arrange for and provide such personnel. USER will bear all costs and expenses of providing such protection and will pay them as a reimbursable expense to WMU. WMU’s provision of security, fire and police personnel shall not relieve USER of any liabilities under any of the other provisions of this Facility Use AGREEMENT.

WMU DPS may take whatever appropriate action it deems necessary to preserve order and safety, to include removing any user or guest who, in the judgment of VENUE management and/or Public Safety, is disruptive, intoxicated, or engaging in any illegal or prohibited activity.

The presence of WMU DPS Officers and/or contracted security firms during an event for which a Facility Use AGREEMENT has been issued does not diminish the USER's responsibility to pay for damages to the facility or to equipment contained in leased premises when damages occur in conjunction with the event. USER may, at its option and expense, request additional WMU DPS personnel for the express purpose of guarding equipment owned by or under the control of the USER. Regardless of the presence or lack of additional security personnel, USER assumes all liability for the loss, theft or damage to the property of the USER or to the USER's performers or exhibitors.

1. Loading and Unloading USER will load and unload equipment only at designated loading areas, and will inform event participants that they may only park and drive in University-designated locations. See Exhibit A for VENUE-specific loading areas and instructions.
2. Owner’s Right to Enter All facilities and/or premises, including keys thereto, shall, at all times, be under control of WMU. WMU shall, at all times, have the right to enter any and all areas occupied by the USER.
3. USER’S Right to Enter USER may only occupy areas of the facility during the license period as designated in Exhibit A to this AGREEMENT. USER has no rights to enter any other area except as designated by WMU.
4. Affiliation, Use of Service Marks, Trademarks Except as provided in this AGREEMENT, WMU and USER shall not be associated or affiliated in any way. USER shall not use WMU’s brand or branding without the prior written consent of WMU’s Office of the Vice President for Marketing and Strategic Communications (MSC). WMU MSC shall have the right to review all material produced for or by USER that uses WMU’s brand or branding or that creates the impression of an association or affiliation.

USER shall obtain and pay for all licenses and permits necessary to conduct operations specified by this AGREEMENT. USER will assume all costs arising from the use of patented, trademarked, franchised or copyrighted works used on or incorporated in the event covered under this AGREEMENT. USER agrees to indemnify, defend, and hold harmless WMU from any claims or costs, including but not limited to legal fees, which might arise from asserted or actual use or misuse of any such works described above. WMU may require evidence of such licenses being in effect.

1. Insurance See Exhibit A for event- and venue-specific insurance requirements.
2. Deposit Requirements See Exhibit A for VENUE-specific deposit requirements.
3. Responsibility for Taxes USER shall be solely responsible for all federal, state, and local taxes, fees and other charges due under or as a result of this AGREEMENT. If USER is a tax-exempt organization, upon request, USER will provide written documentation of such status.

Unless otherwise agreed to in writing by both Parties, which writing shall be attached to this agreement, if USER is a WMU Registered Student Organization (RSO), but University-allocated funds are not funding this USE, the RSO must follow the deposit requirements set forth in Exhibit A. Otherwise, unless an exception is made in writing and attached to this AGREEMENT, if University-allocated funds are funding this USE, both a deposit and the balance will be automatically withdrawn from the RSO’s University account.

1. Final Accounting *See* Exhibit A for VENUE-specific payment and accounting requirements. Unless otherwise agreed to in writing, if WMU does not receive a payment within ninety days of the billing date or final settlement, it may take the following actions: deduct outstanding amount from USER’s account without further notice and without obtaining additional signatures (in-house users); keep any refundable deposit; charge the credit card on file; or refer the debt for collection by another agency.
2. Limitation of Liability WMU shall not be liable to USER for any personal injury, property damage or loss, or loss of life caused by, arising out of, or in connection with the USE, regardless of how such injury or damage may be caused. This limitation includes injury or damage due to any act or omission of WMU, whether arising from breach of contract or warranty, negligence, gross negligence, premises liability, strict or products liability or any other legal theory.
3. Indemnification In consideration for being permitted to use VENUE, USER shall indemnify, save, and hold harmless WMU against any and all claims, demands, actions or causes of action, costs, or penalties, of any nature or character, arising out of or relating to the performance or non-performance of the rights, duties and obligations of the license under this AGREEMENT. Such indemnification includes: any royalties, fees, fines and/or penalties required by applicable copyright laws or any copyright license agreement; right of privacy, or other common law right of person, firm or corporation; the defamation of any firm, person or corporation; any loss or damage to VENUE caused in part or whole by the USER, USER's employees, performers or patrons participating in the event(s) detailed in Exhibit A; and all claims, losses and damages of any kind or nature arising from or in any way connected with USE.
4. Waiver No waiver of any provision hereof or concession made hereunder shall be effective unless made in writing and signed by the waiving or conceding party. The failure of any party to require the performance of any term or obligation of this AGREEMENT, or the waiver by any party of any breach of this AGREEMENT, shall not prevent any subsequent enforcement of such term or obligation or be deemed a waiver of any subsequent breach.
5. Termination/Breach WMU may terminate this AGREEMENT, without penalty, if USER breaches any of the terms contained herein. USER shall reimburse WMU for any fees, including attorneys’ fees, it incurs in connection with enforcing its rights under this this AGREEMENT. WMU may also immediately remove USER from VENUE and prohibit further use of VENUE or equipment (if applicable) for failure to comply with the terms of this AGREEMENT, Laws, WMU Policies, or Fire and Safety Codes.

WMU may immediately terminate this AGREEMENT if it cannot perform any of its terms by reason of an act of God or other unforeseen or uncontrollable event, which, in WMU’s sole discretion, renders the facility and/or equipment unusable. Unless otherwise set forth in Exhibit A, upon termination under this section, neither party will have any further liability to the other.

1. No Assignment USER may not assign this AGREEMENT, in whole or in part, without the prior written consent of WMU.
2. Choice of Law and Dispute Resolution This AGREEMENT will be governed by and construed in accordance with the laws of the State of Michigan. USER must notify WMU of any dispute arising from this agreement. Upon WMU’s notification, WMU and USER will first attempt to resolve any dispute arising out of or relating to this AGREEMENT by prompt, good faith negotiating. Neither PARTY shall file any lawsuit unless the matter has not been resolved within sixty days after USER's notice to WMU. All negotiations pursuant to this clause shall be confidential.
3. Independent Contractor The parties hereto understand that, in all matters contemplated in this AGREEMENT, USER is an independent contractor. USER is not acting as an employee, agent, partner, joint venturer, or lessee of WMU. In addition, nothing contained in this AGREEMENT confers onto one PARTY any express or implied right, power, or authority to enter into any agreement or commitment, express or implied, or to incur any obligation or liability, on behalf of the other PARTY.
4. Entire AGREEMENT This AGREEMENT contains the entire AGREEMENT between the parties. Should the language in this agreement conflict with any other writing obtained by USER, this AGREEMENT shall govern. Any and all modifications must be in writing, signed, and dated by each party's authorized signatories.

ACCEPTANCE OF TERMS AND CONDITIONS OF AGREEMENT

 I have received a copy of Exhibit A and any applicable VENUE-specific Rules or Procedures, and I have read and understand all of the terms and conditions contained in this AGREEMENT. My signature below indicates that I accept the terms and conditions. I acknowledge that this document is a legal and binding contract. I also personally represent and warrant that I am authorized to sign on behalf of, and to bind, USER and that this AGREEMENT is fully enforceable against me. If this warranty is breached, all persons signing below will be personally liable to WMU for all losses and costs that might arise under this AGREEMENT.

 Any fraudulent statements or representations or any misrepresentations by USER shall, at the option of WMU, void the obligations of WMU under this AGREEMENT.

 The undersigned have caused this AGREEMENT and attached Exhibit(s)/Schedule(s) to be duly executed.

|  |  |
| --- | --- |
| **The Board of Trustees of Western Michigan University** | **[USER]** |
| By:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | By:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| Director[Facility Name] | [Printed Name and Title] |
| [Date] | [Date] |
|  |  |
| \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |  |
| [Board-delegated, authorized signatory][Title]  |  |
| [Date] |  |

**Exhibit A**

[*Either attach existing facility-specific terms and conditions or provide detailed information with regard to each category listed below.*]

1. Date and time of arrival
2. Location
3. Number of people expected (to include minors). If actual event attendance exceeds this number, the event may be shut down.
4. University equipment, etc., being used
5. Outside entity equipment, etc., being used/delivered
6. “Day of” University contact info
7. “Day of” User contact info
8. Designated loading areas
9. Parking (if available)
10. Property-specific limitations
11. Misc. (anything else the parties want to have in writing)
12. Insurance [*Either the vendor/USER or the University must provide insurance for every event. If the vendor/USER is not providing its own insurance, FACILITY must verify with Michele Cole that the University’s insurance is sufficient to cover the event.*]