

THE WCU STANDARD FACILITIES USE AGREEMENT MUST BE USED FOR - (1) ANY PROGRAM OR ACTIVITY PRIMARILY SERVING OR INCLUDING MINOR CHILDREN; (2) CAMPS AND CONFERENCES; (3) THE USE OF FACILITIES FOR MORE THAN ONE BUSINESS DAY; AND (4) PROGRAMS OR ACTIVITIES THAT POSE AN INCREASED RISK OF DAMAGE TO PROPERTY OR PERSONAL INJURY.

**WESTERN CAROLINA UNIVERSITY
STANDARD FACILITIES USE AGREEMENT**

THIS STANDARD FACILITIES USE AGREEMENT (the “Agreement”) is entered into on the _____ day of _____, 20____ (the “Effective Date”) by and between **WESTERN CAROLINA UNIVERSITY** (“WCU”), a constituent institution of the University of North Carolina, and _____ (“Licensee”).

**ARTICLE I
LICENSE TO USE FACILITIES**

Section 1.01 *License*. WCU owns and operates or lawfully controls access to and use of the property/facilities described below (“Facilities”), and Licensee desires to use the Facilities on the date(s) and time(s) listed for the purpose(s) listed below.

Facilities (include building and room numbers or other applicable description):

Date(s) and Time(s):

Purpose(s) of Use/Description of Activity or Program:

Expected number of participants in the event/activity:

Will the event/activity primarily serve or include minors? Y or N

(If yes, Addendum A must be completed)

WCU hereby agrees to make the Facilities available to the Licensee under the terms set forth above, and in consideration for permission to access and use the Facilities, the Licensee hereby agrees to pay the charges and comply with all of the terms and conditions set forth below in this Agreement.

**ARTICLE II
CHARGES**

Section 2.01 **Facilities Use and Other Charges.** For and in consideration of the license granted herein, Licensee agrees to pay a Facility Use Charge and other applicable charges as set forth below.

Facilities Use Charge: \$ _____

Administrative Charges (specify all applicable): \$ _____
\$ _____
\$ _____

Variable Charges (specify all applicable): \$ _____
\$ _____
\$ _____

Payment of charges shall be due upon WCU invoice or at least three (3) business days before the date of the use, whichever is sooner. Payments shall be delivered to the individual at the business address listed below:

Attn: _____

Western Carolina University
Cullowhee, NC 28723

**ARTICLE III
TERMS AND CONDITIONS OF FACILITIES USE**

Section 3.01 **Sales and Solicitation.** Licensee will not engage in sales or solicitation for sales of goods or services except as described in Section 1.01 above, "Purposes of Use". All sales and solicitation activities must be conducted in accordance with University Policy #114, "Solicitation, Assemblies, and Public Addresses".

Section 3.02 **Ingress and Egress.** All parts of the sidewalks, doors, passages, vestibules, hallways, stairways, emergency exits, and any access to public utilities in the Facilities must be

kept unobstructed by the Licensee and its participants and attendees.

Section 3.03 ***Damages and Repairs.*** Licensee agrees to be responsible for all damages to buildings, grounds, fields, and equipment caused by Licensee or any of its participants and attendees. Licensee shall not make any temporary or permanent modifications to the Facilities without the prior written consent of WCU.

Section 3.04 ***Compliance.*** Licensee agrees to occupy and use the Facilities in accordance with all applicable WCU policies and with all applicable local, state, and federal laws, regulations, and ordinances, including but not limited to fire codes. Licensee acknowledges that WCU may monitor compliance with requirements for WCU's Facilities use.

Section 3.05 ***Safety of Participants and Attendees.*** The Licensee is responsible for providing all necessary and appropriate event supervision, and for implementing appropriate safety measures to protect participants and attendees at Licensee's event/activity. In the event this Agreement is for the use of the Reid Gym swimming pool, Licensee must provide one lifeguard who is currently certified by the American Red Cross for every 35 persons using the pool. In the event Licensee fails to provide the requisite supervision and safety measures required by this Section 3.05, WCU reserves the right to assume management and control of the event/activities and/or to immediately terminate the license to use the Facilities.

Section 3.06 ***Protection of Minors on Campus.*** If Licensee's use of WCU's Facilities involves activities or programs primarily serving or including minors ("Covered Program"), Licensee shall abide by WCU Policy #126 Protection of Minors on Campus and complete Addendum A.

Section 3.07 ***Camps and Conferences.*** This Agreement must be used for conferences, camps, summer programs, and events, along with any applicable registration request forms, in accordance with University Policy #110, "Conferences and Events Policy".

Section 3.08 ***Abandoned Property.*** Any personal property left in the Facilities shall, after a period of ten (10) business days after the date of the use, be deemed abandoned and shall become property of WCU to be disposed of or utilized at WCU's sole discretion.

Section 3.09 ***Promotion.*** Licensee may not use the university's name or marks, or imply university endorsement or support, without the express permission from an authorized WCU official.

ARTICLE IV
INSURANCE AND INDEMNIFICATION

Section 4.01 **Indemnification.** Licensee shall indemnify, protect, defend, and hold harmless WCU and its trustees, officers, agents, employees, representatives, and assigns, and the University of North Carolina and its governors, officers, agents, employees, representatives, and assigns from and against any and all claims, demands, suits, and causes of action and any and all liabilities, costs, damages, expenses, and judgments incurred in connection therewith (including but not limited to reasonable attorney's fees and court costs), whether arising in equity, at common law or by statute, or under the law of contracts, torts or property, relating to or arising out of Licensee's occupancy and use of the Facilities or any material breach of this Agreement.

Section 4.02 **General Liability Insurance.** Licensee, at its sole expense, shall obtain and maintain in force and effect for the period of use under this Agreement comprehensive general liability insurance, in amounts of not less than One Million Dollars (\$1,000,000) per occurrence and Three Million Dollars (\$3,000,000) in the annual aggregate, in connection with the occupancy and use of the Facilities consistent with the terms and conditions set forth in this Agreement. Certificates of insurance evidencing such insurance coverage shall be provided to WCU at least three (3) business days before the date of the use.

Section 4.03 **Governmental Immunity.** The parties understand and agree that WCU is an agency of the State of North Carolina and nothing herein shall constitute a waiver of sovereign immunity or limits of governmental liability that are set forth in the North Carolina Tort Claims Act, NCGS 143-291 et seq. WCU will be responsible for the negligent conduct of its officers, employees, and others for whom WCU is legally responsible relating to the performance of this Agreement to the extent permitted by the laws of North Carolina, including the North Carolina Tort Claims Act, the Defense of State Employees Act, and the Excess Liability Policy administered through the North Carolina Department of Insurance, subject to the availability of appropriations and in proportion to and to the extent that such liability for damages is caused by or results from the acts of WCU, its officers or employees.

ARTICLE V
MISCELLANEOUS
TERMS

Section 5.01 **Assignment.** Neither party may assign any of its rights or delegate any of its obligations hereunder without first obtaining the prior written consent of the other party hereto. This Agreement inures to the benefit of, and is binding upon, the successors and permitted assigns of the parties hereto.

Section 5.02 **Binding Effect.** Subject to the provisions of this Agreement relating to transferability, this Agreement will be binding upon and inure to the benefit of the parties and their respective successors, heirs, legal representatives, and assigns.

Section 5.03 **Entire Agreement/Amendments.** This Agreement, and Addendum if the use includes or primarily serves minors, contains the entire understanding between the parties hereto and supersedes any and all prior agreements, understandings, and arrangements between the parties relating to the subject matter hereof. No amendment, change, modification or alteration of the terms and conditions hereof shall be binding unless evidenced by a writing signed by the parties hereto.

Section 5.04 **Execution in Counterparts.** This Agreement may be executed simultaneously in one or more counterparts, with each counterpart deemed an original, and all counterparts together constituting one and the same instrument.

Section 5.05 **Force Majure.** No party to this Agreement shall be liable for failure to perform any duty or obligation that said party may have under this Agreement where such failure has been occasioned by any act of God, fire, strike, unavoidable accident, natural disaster, epidemic or pandemic, war or any cause outside the reasonable control of the party who had the duty to perform.

Section 5.06 **Governing Law.** This Agreement and the rights and obligations of the parties hereunder shall in all respects be governed by the substantive law of the State of North Carolina, including all matters of construction, validity and performance. This provision shall survive the term of the Agreement.

Section 5.07 **Non-discrimination.** Neither party shall discriminate against any person on the basis of sex, race, creed, national origin, color, religious belief, age, disability, or status as a disabled veteran or veteran of the Vietnam era in the performance of this Agreement.

Section 5.08 **Notices.** All notices hereunder shall be in writing and will be delivered to the other party by any of the following methods: (1) hand delivery; (2) certified U.S. mail, return receipt requested; (3) overnight courier; or (4) electronic mail. Notices shall be addressed to the other party as follows:

If to Licensee:

Email address: _____

If to WCU:

Western Carolina University

Cullowhee, N.C. 28723

Email address: _____

All notices will be deemed received and effective as follows: (1) if by hand-delivery, on the date of delivery; (2) if by overnight courier, on the date receipt is confirmed by such courier; (3) if by certified U.S. mail, on the date of receipt appearing on a return receipt card; or (4) if by electronic mail, 24 hours after the message was sent if no “system error” or other notice of non-delivery is generated.

Section 5.09 ***Relationship of the Parties***. It is expressly acknowledged by the parties hereto that they are independent contractors and nothing in this Agreement is intended or shall be construed to create an employer/employee relationship, partnership or a joint venture relationship so as to allow one party to exercise control or direction over the manner or method by which the other party performs the services which are the subject matter of this Agreement. Neither party is authorized or empowered to act as agent for the other for any purpose and shall not on behalf of the other enter into any contract, warranty, or representation as to any matter. Neither party shall be bound by the acts or conduct of the other party. Neither party, nor any other person performing services on behalf of such party pursuant to this Agreement, shall have any right or claim against the other party for Social Security benefits, workers' compensation benefits, disability benefits, unemployment insurance benefits, health insurance benefits, paid time off, or any other employee benefit.

Section 5.10 ***Waiver of Breach***. A waiver of any breach of any provision of this Agreement shall not be construed as a continuing waiver of said breach or a waiver of any other breaches of the same or other provisions of this Agreement.

Section 5.11 ***Termination***. WCU may terminate this Agreement at any time in its discretion. If WCU terminates because the Licensee has violated the terms of this Agreement, or because participants or attendees have violated laws or WCU policies, the Licensee is obligated to make full payment of all charges under this Agreement. Otherwise, termination by WCU shall result in a pro rata refund of the applicable charge, based on the portion of the use period that was actually used but less any expenses incurred by the university.

Section 5.12 ***COVID-19 Precautions***. Licensee agrees to abide by all WCU guidelines, directives and policies, including WCU's “Catamounts Care” initiatives, to help members of the community stay healthy and combat the COVID-19 Pandemic. This agreement may be

terminated without penalty by University in the event of public health concerns resulting from positive COVID-19 tests or due to COVID-19 pandemic restrictions or limitations, including but not limited to, mandates or orders from a state or federal government to cancel such event.

Section 5.13 *COVID-19 Waiver of Liability*. Licensee acknowledges the contagious nature of COVID-19, the fact that it can be difficult to identify in another, and the inherent risks of exposure at the University to those who may be infected with COVID-19. Licensee voluntarily assumes the risk that Licensee, or Licensee's guests, may be exposed to or infected by COVID-19 by participating in the Programs and that such exposure or infection may result in personal injury, illness, permanent disability, and/or even death. Licensee voluntarily assumes full responsibility for any and all risks of illness or injury associated with Licensee's, or Licensee's guests, exposure to COVID-19, as well as from use of any protective equipment, including face masks, that the University may voluntarily provide to Licensee. Licensee completely absolves the University, its trustees, officers, employees, agents, and contractors and any and all legal or financial responsibility, including, but not limited to, any personal injury, disability, illness, damage or death from exposure to COVID-19, whether such exposure occurs before, during or after Licensee's participation in the Programs. Also, Licensee, Licensee's guests, heirs, and personal representatives agree not to make any type of legal or equitable claim on University, or any of its trustees, officers, employees, agents or contractors with respect to any exposure they may have to COVID-19, whether or not it arises through the negligence, omission, default or other action of anyone affiliated with the University, including students. Licensee further agrees that if any such claim is made, Licensee will indemnify and defend University with respect to any such claim.

[Signatures appear on the following page]

IN WITNESS WHEREOF, the authorized representatives of WCU and Licensee have executed this Agreement as of the date first written above.

WESTERN CAROLINA UNIVERSITY	LICENSEE
By: _____	By: _____
Its: _____	Its: _____