

STATE OF NORTH CAROLINA

WAKE COUNTY

Rev. 12/11

This contract expires 10 days from the date of its receipt by USER if not executed.

**North Carolina State University  
Carmichael Gym Aquatics Center Use Agreement for Non-University Users**

This Use Agreement is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2\_\_\_\_, by and between North Carolina State University, c/o Carmichael Complex Facilities and Operations (“NC STATE”) and \_\_\_\_\_, (“USER”), whose principal place of business is \_\_\_\_\_, telephone: \_\_\_\_\_, and fax number: \_\_\_\_\_.

Whereas NC STATE owns and operates, or lawfully controls, the Carmichael Gymnasium Aquatics Center (“FACILITY”), and USER desires to use said FACILITY, NC STATE agrees to make said FACILITY and no other available to USER at the date(s) and time(s) and for the purposes referenced below and no other.

Date(s): \_\_\_\_\_

Time(s): \_\_\_\_\_

Purposes of Use: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_ (“EVENT”).

In consideration for being permitted to use the FACILITY for the stated EVENT, the USER Agrees to pay the following fees and abide by the following conditions:

**ARTICLE 1: USE FEE AND OTHER PAYMENTS**

1.1 For use of the FACILITY, the USER agrees to pay NC STATE the sum of \$\_\_\_\_\_. This USE FEE includes charges for existing electric lights, heat and water as may be needed for presentation of the EVENT, but only in places and amounts as now installed in the FACILITY.

1.2 In addition to the USE FEE described above, the USER will be responsible for paying all OPERATING EXPENSES, if any, of the EVENT. OPERATING EXPENSES include, but are not limited to, the following: other fees, ticket sellers, ticket takers, door guards, cleanup, police, parking, parking control, ushers and special security. If USER does not provide workers, NC STATE will provide workers and their wages shall be set in accordance with State and NC STATE hiring and wage guidelines. A schedule of estimated expenses is as follows:

Facility Staffing	\$ _____
Campus Police	\$ _____
Parking Services	\$ _____
Setup	\$ _____
Tables	\$ _____
Chairs	\$ _____
Cleanup	\$ _____
Dumpsters/Trash Removal	\$ _____
Timing System/Operator	\$ _____
Other (specify)	\$ _____
<b>TOTAL ESTIMATED OPERATING EXPENSES:</b>	<b>\$ _____</b>

This estimate is for budgeting purposes. Actual expenses shall be charged at the conclusion of the EVENT.

1.3 An advance deposit of 50% of the USE FEE and of the TOTAL ESTIMATED OPERATING EXPENSES, is required for the reservation of the FACILITY and must be submitted with and become a part of this Agreement. The DEPOSIT is equal to the amount of \$ \_\_\_\_\_ and is non-refundable except in accordance with section 3.6.

1.4 All amounts due under this Agreement, other than the DEPOSIT, are due and payable within 30 days of the completion of the event. USER will receive final invoice within 1 week of the conclusion of the event.

1.5 NC STATE shall not be responsible for the payment of any taxes arising out of or connected with the use of the FACILITY by the USER. The USER shall be responsible and be required to pay upon demand to NC STATE an amount sufficient to discharge all taxes that may arise from or in connection with the USER's use of the FACILITY.

1.6 All Use Fees, expenses, charges and other sums to be paid by the USER, whether due or not due, shall be and constitute a first lien on all of the USER's property that is in or upon the FACILITY at the time of any default under this agreement by the USER, the USER hereby mortgages or pledges said property for the purpose of securing the payment of all rents, charges and other sums herein provided to be paid. In the event of such default NC STATE may take

possession of any and all of said property, including box office, receipts and hold the same until such default has been remedied, and if not remedied or satisfied within ten days of such default, NC STATE may advertise said property for sale and upon such sale shall apply the proceeds there from to the satisfaction of any amounts due NC STATE. If there are sums remaining after the satisfaction of any amounts due NC STATE, the said sums will be paid to USER. This remedy is not exclusive and NC STATE may, at its discretion, pursue any appropriate remedy to recover all or any deficits remaining of the above mentioned rents, charges, and other sums.

1.7 The aforementioned fees in sections 1.1, 1.2, and 1.3 do not include ticket sales:

Total Seats available for sale for this EVENT: \_\_\_\_\_  
Advanced tickets shall be priced: \$\_\_\_\_\_/ticket  
Day of tickets shall be priced: \$\_\_\_\_\_/ticket  
\_\_\_\_\_ Complimentary tickets will be provided to NC STATE

1.8 In order to provide a safe and secure environment for the campus community and visitors, when there is a threat of disruption of the EVENT, for protection of university property when there is a threat of damage, and to maintain public order for large events, security will be provided for the EVENT as necessary based on a security assessment by University Police. If University Police determine that special event security is required for the EVENT, LICENSEE/USER shall be responsible for paying all costs for the security personnel and for other security measures including, but not limited to, barricades, metal detectors and parking control measures, as specified by the University Police Chief or designee.

## **ARTICLE 2: TERMS & CONDITIONS**

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

2.2 All rights to sell concessions at the EVENT are reserved by NC STATE, and the USER will not be permitted to sell any beverages, confections, tobacco, or food for consumption at the FACILITY, except as specifically granted to in this or additional written agreements. The sale and distribution of alcohol to the general public is strictly prohibited. All rights to sell merchandise at the EVENT are reserved by NC STATE, and the USER will not be permitted to sell merchandise, programs, souvenirs, or other personal property unless expressly agreed to in this or additional written agreements.

2.3 The USER agrees to have a person present for load in and load out. NC STATE will not sign for any items shipped for the USER nor take any responsibility for them unless prior arrangements have been agreed upon.

2.4 The USER agrees to use and occupy the FACILITY in accordance with all NC STATE policies, regulations, rules, and practices and with all applicable municipal, state, and federal laws, including but not limited to fire codes. NC STATE assumes no responsibility whatsoever,

for any property placed in said FACILITY by USER, its employees, its agents, its guests, its patrons, and its invitees, and NC STATE is hereby expressly released and discharged from any and all liabilities for any loss, injury or damages to person or property that may be sustained by reason of the use of said FACILITY under this Agreement.

2.5 The USER is responsible for providing all necessary and appropriate safety instruction to all participants and attendees at USER's activity. The USER is responsible for any and all damages to buildings, grounds, fields, and equipment caused by participants and attendees. If the use of the FACILITY is open to any non-members, then no one shall be denied the equal privileges and enjoyment of having free and open access to the FACILITY on the basis of race, color, national origin, religion, age, veteran's status, sex, or disability.

2.6 All watchmen or other protective service desired by the USER must be arranged for by special agreement with NC STATE and the USER is responsible for all such costs.

2.7 It is understood and agreed that NC STATE hereby reserves the right to control and manage the FACILITY and to enforce all necessary and proper rules for the management and operation of the same. NC STATE, its employees, and its agents shall have free access at all times to all space occupied by the USER. Design of the staging is to be approved by NC STATE.

2.8 Any property left in the FACILITY shall, after a period of ten days from the last day of use hereunder, be deemed abandoned and shall become property of NC STATE to be disposed of or utilized at NC STATE's sole discretion.

2.9 The USER shall be responsible for all damage to buildings, grounds, fields, and equipment incident to the USER's use of said FACILITY. USER shall make no temporary or permanent modifications to the FACILITY without the prior written consent of NC STATE. USER shall not operate trucks, forklifts and other non-passenger vehicles outside of areas designated by NC STATE. An amount equal to the Deposit shall be withheld until such time as the costs of repairs, if any, have been determined. The amount will be refunded, less any reasonable expenses, within ten business days.

2.10 USER agrees that cancellation or postponement of the EVENT, unless permitted by NC STATE in writing, may be considered by NC STATE as breach of the Agreement and all deposits, costs, advances, use fees, and charges shall be due upon demand by NC STATE from the USER.

2.11 NC STATE may terminate this agreement at any time in its discretion. If NC STATE terminates because USER has violated the terms of this agreement, or because participants or attendees have violated laws or NC STATE policies, the USER is obligated to make full payment of all fees under this agreement. Otherwise, termination by NC STATE shall result in a pro rata refund of the applicable fee, based on the portion of the use period that was actually used but less any expenses incurred by NC STATE.

### **ARTICLE 3: INDEMNIFICATION, HOLD HARMLESS, AND INSURANCE**

3.1 The USER shall indemnify and save harmless NC STATE, its officers, its agents, and its employees from all loss, cost, and expense arising out of any liability or claim of liability for injury or damages to persons or property sustained or claimed to have been sustained by any one whomsoever, by reason of the use or occupancy of the FACILITY, whether such use is authorized or not, or by any act or omission of USER or any of its officers, agents, employees, guests, patrons, or invitees. USER shall pay for any and all damage to the property of NC STATE, or loss or theft of such property, done or caused by such persons.

3.2 The USER expressly waives any and all claims for compensation for any and all losses or damage sustained by reason of any defect, deficiency, failure or impairment of the water supply system, drainage system or electrical system leading to or on the demise of the FACILITY. In the event the FACILITY or any part thereof is damaged by fire or if for any other reason, including strikes, failures of utilities, or any act of God, which, in the judgment of NC STATE renders the fulfillment of this Agreement by NC STATE impossible, the USER hereby expressly releases, discharges, and will save harmless NC STATE, its officers, its agents, and its employees from any and all demands, claims, actions and causes of actions arising out of any of the causes aforesaid.

3.3 If any material, composition or name to be used or performed under this AGREEMENT is copyrighted, the USER shall be responsible for securing, before using or employing such material, composition or name, the assent in writing, of the owner or licensee of such copyright. The USER agrees to be fully responsible for any fees, royalties and licensees in connection therewith. Furthermore, the USER shall indemnify and save NC STATE harmless from any and all claims, expenses or suits for copyright infringements that may arise from the performance of this Agreement.

3.4 The USER certifies and attests that it has a valid, properly executed, and compatible contract with the performers whose services form the basis for its desire to use the FACILITY. Upon request of NC STATE, USER shall submit a copy of the performers' contract within 5 business days after the request.

3.5 USER further agrees to purchase at its own expense a comprehensive liability insurance policy, including public liability and property damage, written by a company licensed to do business in the State of North Carolina and acceptable to NC STATE, covering premises, operations hereunder, and productions therein in the amount of \$500,000 for bodily injury and \$500,000 property damage or combined single limit of \$1,000,000. NC STATE shall be named as an insured in any insurance policy required hereunder. The LICENSEE agrees that the insurance purchased hereunder shall be primary coverage and will contain no terms allowing the insurer to be subrogated to the rights of any injured or damaged person or entity.

3.6 A certificate evidencing the insurance as required under this Agreement shall be delivered to NC STATE no later than **30 (contracts/security deposit and certificate of insurance all are due 30 days in advance)** days prior to the start of the EVENT. Each such

certificate shall contain a valid provision or endorsement that the policy may not be cancelled, terminated, changed, or modified without giving ten days written notice to NC STATE. Providing and maintaining insurance coverage is a material term of this contract.

3.6 If the FACILITY is rendered unsuitable for the conduct of the EVENT by reason of Force Majeure, NC STATE and the USER are released from their obligations as they pertain to the EVENT. NC STATE shall not be responsible for any damages sustained by USER but USER shall be entitled to a refund of the DEPOSIT. Force Majeure shall mean fire, earthquake, hurricane, flood, act of God, strikes, work stoppages, or other labor disturbances, riots or civil commotions, war or other act of any foreign nation, power of government, or governmental agency or authority, or any other cause like or unlike any cause mentioned which is beyond the control of NC STATE.

#### **ARTICLE 4: MISCELLANEOUS**

4.1 All matters not authorized expressly by the terms of this contract shall be reserved to the discretion of NC STATE. The USER shall be subject to the terms and conditions of the Rules and Regulations of the FACILITY, a copy of which shall be provided by NC STATE to USER.

4.2 This Agreement is personal, and the USER shall not assign this Agreement nor sublet the FACILITY without the prior written consent of NC STATE.

4.3 This Agreement and all and each of its terms and conditions shall be binding on and inure to the benefit of the parties hereto and their respective successors and permitted assigns.

4.4 It is agreed that the USER, its promoter, its members, its agents, and its employees are independent contractors and have no employment relationship, no joint venture nor partnership with NC STATE with respect to the subject matter of this Agreement.

4.5 This writing contains the whole and complete agreement between NC STATE and USER.

4.6 The terms of this Agreement are severable such that if one or more provisions are declared illegal, void, or unenforceable, the remainder of the provisions shall continue to be valid and enforceable.

4.7 This Agreement shall be governed by and construed under the laws of the State of North Carolina, which shall also be the forum for any lawsuit arising from or incident to this Agreement.

4.8 The State or NC STATE auditor shall have access to persons and records as a result of all contracts or grants entered into by State agencies or political subdivisions in accordance with North Carolina General Statute §147-64.7 and Session Law 2010-194, Section 21.

4.9 If NC STATE provides the USER with personal identifiers as listed in N.C.G.S. §132-1.10 and in N.C.G.S. §14-113.20(b) or any other legally confidential information, USER hereby

certifies that collection of this information from NC STATE is necessary for the performance of USER's duties and responsibilities on behalf of NC STATE under this Contract. USER further certifies that it shall maintain the confidential and exempt status of any social security number information, as required by N.C.G.S. §132-1.10(c)(1), and that it shall not re-disclose personally identifiable information as directed by State and Federal laws. Failure to abide by legally applicable security measures and disclosure restrictions may result in the interruption, suspension and/or termination of the relationship with USER for a period of at least five (5) years from date of violation. If USER experiences a security breach, as defined in N.C.G.S. §75.61(14), relating to this information, in addition to the USER's responsibilities under the NC Identity Theft Protection Act, USER shall immediately notify NC STATE with the information listed in N.C.G.S. §75-65(d)(1-4) and shall fully cooperate with NC STATE. USER shall indemnify NC STATE for any breach of confidentiality or failure of its responsibilities to protect confidential information. Specifically, these costs may include, but are not limited to, the cost of notification of affected persons as a result of its unauthorized release of NC STATE data provided to USER pursuant to the Contract.

4.10 If NC STATE provides the USER with "personally identifiable information" from a student's education record as defined by the Family Educational Rights and Privacy Act ("FERPA") and its implementing regulation 34 CFR §99.3, USER hereby certifies that collection of this information from NC STATE is necessary for the performance of USER's duties and responsibilities on behalf of NC STATE under this Contract. In this instance, NC STATE considers USER a school official with a legitimate educational interest under FERPA. USER further certifies that it shall maintain the confidential status of education records in their custody, and that it shall not re-disclose personally identifiable information as directed by FERPA. Failure to abide by legally applicable security measures and disclosure restrictions may result in the interruption, suspension and/or termination of the relationship with USER for a period of at least five (5) years from date of violation. If USER experiences a security breach relating to this information or if USER re-discloses the information, USER shall immediately notify NC STATE. USER shall indemnify NC STATE for any breach of confidentiality or failure of its responsibilities to protect the personally identifiable information. Specifically, these costs may include, but are not limited to, the cost of notification of affected persons as a result of its unauthorized release of NC STATE data provided to USER pursuant to the Contract.

4.11 If NC STATE provides any data to USER pursuant to this Agreement then USER shall preserve and maintain the data for a period of three (3) years or as indicated in a litigation hold letter issued by NC STATE, to fulfill NC STATE's obligations under the North Carolina Public Records Act and under the Federal and North Carolina Rules of Civil Procedure. USER shall immediately preserve and maintain data (and any generated email correspondence) upon NC STATE's request or upon notice of litigation or audit and further USER shall make available all data that NC STATE may specify within the time limits required.

IN WITNESS WHEREOF, the parties have duly executed this instrument the day and year first above written.

North Carolina State University  
c/o Carmichael Complex

USER: \_\_\_\_\_

\_\_\_\_\_  
Name: \_\_\_\_\_  
Title: Director of Facilities and Operations  
Date: \_\_\_\_\_

\_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_