

STATE OF NORTH CAROLINA

COUNTY OF WAKE

Rev. 9/16

FACILITY USE AGREEMENT

THIS FACILITY USE AGREEMENT (“Agreement”) is made as of the date of the last signature below (the “Effective Date”) by and between **NORTH CAROLINA STATE UNIVERSITY** (“NC State”) and _____ (“User”). NC State and User may be referenced collectively in this Agreement as the “Parties” or each individually as a “Party.”

WHEREAS, NC State operates and controls the property described herein; and

WHEREAS, User desires to use NC State’s property for the limited times and purposes set forth herein; and

WHEREAS, NC State desires to permit User’s use of NC State’s property pursuant to the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. **Permitted Use.** This Agreement permits User the temporary use of property specified herein for the sole purpose of conducting an activity (the “Activity”) as follows:

a. Location(s) (detailed description or map attached as exhibit):

_____ (collectively, the “Facility”)

b. Date(s): _____

c. Beginning and Ending Times: _____

d. Description of Activity:

e. Anticipated number of participants: _____

2. **Use Fee and Additional Expenses.**

- a. User shall pay the sum of _____ Dollars (\$_____) for use of the Facility (the “Use Fee”) no later than _____. Use Fee payments shall be submitted to _____.

- b. The Use Fee shall include the following:
 - i. Use of the Facility.

 - ii. Additional services:

- c. In addition to the Use Fee, User shall be responsible for any and all expenses incurred by NC State in support of or as a result of User’s use of the Facility (“Additional Expenses”). Such Additional Expenses may include, but are not limited to, cleaning costs, security costs, parking fees, and setup and takedown costs, unless otherwise indicated in subsection (ii) above. User shall remit payment for all Additional Expenses within thirty (30) days of receipt of an invoice from NC State.

- d. In order to provide a safe and secure environment for the NC State community and visitors, when a threat of disruption of the Activity exists, for protection of NC State property when a threat of damage exists, and to maintain public order for large events, security will be provided for the Activity as necessary following a security assessment by University Police. If University Police, in its sole discretion, determines that special event security is required for the Activity, User shall be responsible for paying all costs for security personnel and other security measures including, but not limited to, barricades, metal detectors and parking control measures, as specified by the University Police Chief or designee, and such costs shall become Additional Expenses, payable as described in subsection (c) above.

3. **User’s Obligations.**

- a. **Facility Rules.** User shall at all times comply with the rules for activities and users of the Facility, as amended from time to time. A current copy of such Facility rules, as well as additional rules applicable to this specific Activity, if any, is attached hereto as **Attachment A** and incorporated by reference as if fully set forth herein.

- b. **Compliance With Applicable Law.** User shall conduct the Activity in an orderly manner in full compliance with all NC State policies, regulations, rules, and practices and with all applicable federal, state and local laws.
- c. **Activity With Minor Participants.** If Activity involves the participation of minors, User shall perform a criminal background check on all adult supervisors. Adult supervisors shall remain at the Facility for the duration of the Activity, and the following minimum adult supervisor to minor participant ratio based upon the majority of participants' ages shall be observed at all times:

<u>Participant Age</u>	<u>Supervisors</u>	<u>Participants</u>
4-5 years	1	5
6-8 years	1	6
9-14 years	1	8
15-17 years	1	10

- d. **Obstructions.** All portions of the sidewalks, entries, doors, passages, vestibules, halls, corridors, stairways, passageways, and all ways of access to public utilities of the Facility shall be kept unobstructed by User and shall not be used by User for any purpose other than ingress to or egress from the Facility.
- e. **Alterations.** User shall not make alterations or modifications to the Facility or any equipment contained therein without the prior written approval of NC State.
- f. **Logos and Marks.** User shall not use the logos, marks, or names of NC State for any purpose without the prior written approval of NC State, except to indicate location of the Activity.
- g. **Activity Conclusion.** The Activity and all use of the Facility shall terminate and the Facility be vacated no later than the time and dates specified in this Agreement. In the event the Facility is not vacated at such time, additional fees may apply.
- h. **Reimbursement.** User shall be solely responsible for all damages to buildings, grounds, and equipment, arising out of the conduct of the Activity or use of the Facility, including the actions of Activity participants and attendees, and shall promptly reimburse NC State the actual cost of repairing or replacing any such damaged property.
- i. **Abandoned Property.** Any property left at the Facility shall, after a period of ten (10) days from the end of the Activity, be deemed abandoned and shall become property of NC State to be disposed of or utilized at NC State's sole

discretion. User shall be responsible for any disposal costs incurred by NC State.

4. **Termination.**

a. **Termination by User.**

- i. User may terminate this Agreement without cause upon written notice to NC State up to _____ prior to the Activity. In the event of such notice of termination without cause, NC State shall be entitled to reimbursement of all expenses incurred by NC State prior to its receipt of notice of termination, and the Parties shall have no further obligations to each other. Any amount of the Use Fee already received by NC State exceeding those expenses shall be refunded to User.
- ii. In the event of termination of this Agreement by User without the prior written notice specified in subsection (i) above, User is obligated to make full payment of the Use Fee, as well as all expenses incurred by NC State prior to its receipt of notice of termination. No refund of the Use Fee or Additional Expenses shall be due.

b. **Termination by NC State.**

- i. NC State may terminate this Agreement without cause at any time in its sole discretion. In the event of such notice of termination without cause, NC State shall return to User a pro rata refund of the Use Fee already paid, save any expenses incurred by NC State in the performance of this Agreement as of the date of termination, and the Parties shall have no further obligations to each other.
- ii. User's failure to comply with any of the terms and conditions of this Agreement is grounds for immediate termination of this Agreement by NC State. In the event of termination by NC State as a result of a breach by User, User is obligated to make full payment of the Use Fee and all expenses incurred by NC State as of the date of termination. No refund of the Use Fee or any Additional Expenses shall be due.

- c. All promises, requirements, terms, conditions, provisions, representations, guarantees and warranties contained herein shall survive the expiration or terminate date of this Agreement unless specifically provided otherwise herein, or unless superseded by applicable federal or state statutes of limitations.

5. **Force Majeure.** If the Facility is rendered unsuitable for the conduct of the Activity or if the Activity itself must be cancelled by reason of fire, earthquake, hurricane,

flood, act of God, strikes, work stoppage or other labor disturbances, riots or civil commotions, war or other act of any foreign nation, power of government, governmental agency or authority, or any other cause which is beyond the control of NC State or User, the Parties are released from their obligations under this Agreement.

6. **Release.** User releases and discharges NC State 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 the Facility under this Agreement.
7. **Indemnification.** User shall indemnify, defend and save harmless the State of North Carolina and NC State along with its trustees, officers, employees and agents, from any and all liabilities, suits, actions, claims, demands, damages, losses, expenses and costs of every kind and nature incurred, asserted or imposed against the State of North Carolina and/or NC State by reason of any accident, injury (including death), or damage to any person or property howsoever caused, arising from or connected with the Activity or User's use of the Facility. If User is a state or federal government agency, indemnification is not required where prohibited by law. This representation and warranty shall survive the termination or expiration of this Agreement.
8. **Insurance.**
 - a. At all times during its use of the Facility, User, at its sole cost and expense, shall purchase and maintain the following policies:
 - i. Commercial General Liability insurance, using form ISO CG 00 01 or equivalent, covering the Activity contemplated by this Agreement, including coverage for public liability, bodily injury and property damage, with combined single coverage limits of no less than One Million Dollars (\$1,000,000.00) per occurrence, Two Million Dollars (\$2,000,000.00) aggregate; and,
 - ii. Worker's compensation insurance, where required by North Carolina law; and,
 - iii. Such insurance as required by federal, state or local laws, codes or regulations.
 - b. All insurance policies required to be purchased under this Agreement shall be issued by insurance companies with an A.M. Best rating of "A" or better, and shall be issued by companies qualified to do business in the State of North Carolina. Such insurance shall be issued in the name of User with NC State and the State of North Carolina named as additional insureds, using ISO Form CG 2026 or equivalent. User agrees that the insurance shall be primary coverage and shall contain no terms allowing the insurer to be subrogated to

the rights of any injured or damaged person or entity insofar as said person or entity may have claims against NC State. The certificate of insurance shall contain a valid provision or endorsement that the policy may not be cancelled, terminated, changed, or modified without reasonable prior written notice to NC State. User shall provide to NC State each policy or certificate of insurance evidencing such policy issued on Accord Form 25 or equivalent, at least five (5) business days prior to the start of the Activity.

9. **Assignment.** This Agreement is personal and User shall not assign this Agreement or any privileges granted hereunder, nor allow any other person, group, or entity to use the Facility during the time of the Activity without the prior written consent of NC State.

10. **Relationship of the Parties.** User and its representatives, agents, contractors, and employees have no employment relationship, no joint venture nor partnership with NC State with respect to the subject matter of this Agreement.

11. **Notices.** All notices shall be hand delivered, sent by private overnight mail service, or sent by registered or certified U.S. mail and addressed to the Party to receive such notice at the address given below, or such other address as may hereafter be designated by notice in writing:

If to NC State: _____

If to User: _____

12. **Entire Agreement.** This Agreement contains the entire agreement of the Parties and there are no representations, inducements or other provisions other than those expressed herein. All changes, additions or deletions to this Agreement shall be in writing and executed by the authorized representatives of both Parties.

13. **No Waiver.** The waiver by NC State of any agreement, condition, or provision contained in this Agreement will not be deemed a waiver of any subsequent breach or any other agreement, condition, or provision contained in this Agreement, nor will any custom or practice that may develop between the Parties in the administration of the terms of this Agreement be construed to waive or lessen the right of NC State to insist upon User's performance in strict accordance with the terms of this Agreement.

14. **Governing Law.** This Agreement and the rights and obligations of the Parties hereto shall be interpreted, construed and enforced in accordance with the laws of the State of North Carolina, without regard for its conflict of laws provisions, which shall be the exclusive venue for any legal proceedings arising from or incident to this Agreement.
15. **Severability.** Should any provision of this Agreement be declared illegal, void, or unenforceable under North Carolina law, or shall be considered severable, the Agreement shall remain in force and be binding upon the Parties hereto as though the said provision had never been included.
16. **No Property Right.** Under no circumstances shall this Agreement be construed as granting to User any right, title or interest of any kind in the Facility or any property of NC State or the State of North Carolina.

IN WITNESS WHEREOF, User and NC State have executed this Agreement as of the date of the last signature below as indicated by the signatures of their authorized representatives.

USER

By: _____
 Name: _____
 Title: _____
 Date: _____

**NORTH CAROLINA STATE
 UNIVERSITY**

By: _____
 Name: _____
 Title: _____
 Date: _____

Acknowledged by:

 Name: _____
 Title: _____
 Date: _____

ATTACHMENT A

Facility Rules (if applicable)