

**FACILITY USE AGREEMENT**

**THIS FACILITY USE AGREEMENT** (“Agreement”) made as of this \_\_\_\_ day of \_\_\_\_, 20\_\_\_\_, between \_\_\_\_ and \_\_\_\_\_ individually referred to as a “Party” and collectively referred to as the “Parties”.

**WITNESSETH**

WHEREAS, XXXX desires to conduct its \_\_\_\_\_ on \_\_\_\_\_, 2019 (“Event”) which requires certain facilities located at \_\_\_\_\_ located at \_\_\_\_\_ (hereinafter defined as the “Premises”); and

WHEREAS, XXXX has the Premises available for use; and

WHEREAS, the Parties desire to enter into an Agreement whereby XXXX will make the Premises available to XXXX as further defined herein.

NOW, THEREFORE, in consideration of the mutual covenants herein granted and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, XXXX hereby grants XXXX use of the Premises under the terms and conditions as specified herein:

**1. Facilities.** The XXXX hereby grants to the XXXX permission for exclusive use the following space at the Premises for the Event, on the date(s) and at the time(s) specified:

- a. Description of Space: \_\_\_\_\_
  - i. 10 hard courts;
  - ii. Common Areas, including the grassy spaces;
  - iii. Facility, specifically as restroom and water fountains; and
  - iv. Parking Lot – mutually agreed upon designated spots large enough to accommodate food trucks, shuttle bus, and portable restroom(s).
- b. Date(s):
- c. Court Use Time(s):
- d. Facility Use Time(s):
- e. Rescheduling or additional day(s) may be necessary due to inclement weather and will be mutually agreed upon between Parties.

**2. Fees and Payment.** XXXX agrees to pay XXXX a total of \_\_\_\_\_ dollars (\$\_\_\_\_.00) (“Facility Use Fee”). The Parties agree that the Facility Use Fee shall be payable at the conclusion of Services and within thirty (30) days of XXXX’s receipt of an invoice and completed W9. Such payment by the XXXX may be made through electronic means and XXXX agrees to complete any electronic payment forms requested by XXXX.

**3. XXXX Responsibilities.** XXXX shall provide, on a non-exclusive basis, the following services for the Event (“Services”):

- a. XXXX shall provide and maintain a sufficient number of tennis courts in a condition consistent with the standards of hosting a tennis event, as reasonably determined by the XXXX.
- b. XXXX shall provide coolers with ice on each of the Courts utilized by the XXXX throughout the Event.
- c. XXXX shall ensure that all of the courts are in good condition prior to the Event.
- d. XXXX agrees to have a maintenance staff member on-site through the length of the Event.

- i. XXXX shall also provide XXXX with an evacuation and emergency plan for the Event.
- ii. XXXX shall provide XXXX access to its grassy common areas for use during the Event.
- iii. XXXX shall provide access to its parking lot, such that a shuttle bus may drop off and pick-up XXXX Staff and Members.
- iv. XXXX shall provide access to its parking lot, such that the XXXX may have its food truck and portable restroom vendors park during the event with reasonable access around each.
  - e. XXXX shall provide access to electricity

**4. XXXX Responsibilities.** XXXX shall provide, on a non-exclusive basis, the following during the Event:

- a. Provide towels, water, and tennis balls for the Event.
- b. XXXX shall use all reasonable efforts to consult with XXXX on the placement of its banners and signage, sponsor banners, tents, and/or booths, provided, however, placement location(s) shall be in the sole discretion of XXXX.
- c. XXXX shall repair, or cause to be repaired, any damage which may occur to the premises during the Events which are directly caused by XXXX.
- d. All articles, exhibits, fixtures, materials, displays, staging, lighting, and equipment of XXXX shall be brought into or taken out of the facility only at such entrances as may be designated by XXXX.

**5. Term; Termination.**

a. Term. The term of this Agreement shall commence on the Effective Date and terminate at the conclusion of the Event but no later than \_\_\_\_\_, 20\_\_ (“Term”) unless this Agreement is not otherwise terminated as provided for below.

b. Termination. At its sole option, XXXX may terminate this Agreement at any time for any reason upon written notice to the XXXX, which shall be given no less than five (5) days prior to the Event. Upon termination of this Agreement, XXXX shall promptly return any and all XXXX property, including any Confidential Information (as defined below).

**6. Licenses.** To the extent trademarks are used the Parties grant to each other a non-exclusive, non-transferable, non-assignable, royalty-free, revocable license to use the other’s name, logo, trademarks, copyrights, and trade names only in connection with the Events and for only the duration of the Events, provided, however, any such use shall be pre-approved by the XXXX. Except as expressly provided for herein, XXXX shall not refer to this Agreement (or any of its terms) or use XXXX’s name, addresses, logos, trademarks, copyrights or trade names for any purpose without the prior written consent of XXXX.

**7. Use.** XXXX grants to the XXXX and its respective parents, subsidiaries and affiliates, licensees, successors and assigns, for good and valuable consideration, receipt of which is acknowledged, permission to use and publish images, including but not limited to photographs and video footage, of the property and the contents thereof and the appurtenances thereto located at the Venue in perpetuity in connection with the Event. All physical embodiments of filming, recording, and photography on the Venue shall be known as the “Materials.”

**8. No Joint Venture.** XXXX acknowledges that it is hosting the Event and is not an agent, employee, partner, or joint venturer of XXXX, and that XXXX shall not be required to withhold or pay federal, state or local income taxes or payroll taxes of any kind on behalf of XXXX. XXXX does not have any express, implied or apparent authority to make commitments on behalf of XXXX pursuant to this Agreement or otherwise.

**9. Representations and Warranties by XXXX.** XXXX represents and warrants that (i) it has full legal capacity to enter into this Agreement without violation of or conflict with any other agreement or instrument to which it is a party or may be bound; (ii) it shall at all times comply with all applicable laws,

rules and regulations in the performance of the Services; (iii) it has all licenses, certifications, permits and other approvals required to perform the Services; (iv) it has the full power and authority to make the assignment of rights herein; and (v) the rights granted shall not infringe any third-party copyright, patent, trademark, trade secret or other proprietary right, including the rights of publicity and privacy.

**10. Insurance.** XXXX shall ensure that the facility maintains and evidences the following insurance, which shall remain in full force and effect at all times during the Term. Prior to the commencement of the Term, XXXX must receive XXXX's approval of certificates of insurance submitted by XXXX evidencing the following insurance, which must remain in full force and effect at all times during the Term (i) Commercial General Liability with a per occurrence limit for Bodily Injury and Property Damage of at least 2,000,000, including blanket contractual and participants liability; (ii) Statutory Worker's Compensation Insurance (including occupational disease) in accordance with applicable state laws; and (iii) Employer's Liability Insurance for \$1,000,000 per accident and disease. Each policy of insurance, except Worker's Compensation, shall name XXXX as an additional insured.

**11. Confidential Information.** In the event and to the extent that XXXX has access to information which is confidential or of a proprietary nature to XXXX, including, but not limited to, membership lists and personal data, technical, marketing, product, and business affairs, and proprietary and trade secret information, whether oral, graphic, written, electronic, or in machine readable form ("Confidential Information"), XXXX agrees to keep all Confidential Information strictly confidential and not to use or disclose to others the Confidential Information without XXXX's prior written consent. If XXXX is required to disclose Confidential Information by law or order of a court, administrative agency, or other governmental body, then it shall provide XXXX with prompt notice of the order or requirement, so that XXXX may seek a protective order or otherwise prevent or restrict such disclosure.

**12. Indemnification.** The Parties shall indemnify and hold harmless one another, its affiliates and subsidiaries and their respective principals, directors, officers, partners, members, managers, employees, agents and representatives (collectively referred to herein as the "Representatives") from and against any damage, liability, losses, reasonable costs, reasonable expenses, fines, penalties (including punitive or exemplary damages), suffered or paid by any the other party or any of its Representatives or Event participants as a result of any and all claims, demands, suits, judgments or liabilities (including, without limitation, reasonable fees and expenses of legal counsel) caused by or arising out of (i) the breach by Customer of any representation, warranty or covenant in this Agreement; (ii) the negligence or willful or reckless misconduct of the party in connection with this Agreement or the use of XXXX facilities, unless caused by or arising out of (i) the breach by a party of any representation, warranty or covenant in this Agreement; (ii) the negligence or willful or reckless misconduct of a party and/or its Representatives in connection with this Agreement and the use of XXXX facilities.

**13. Force Majeure.** The performance of this Agreement is subject to termination without liability or penalty upon the occurrence of any circumstance beyond the control of either party – such as acts of God, war, terrorism or threatened acts of terrorism, government regulations, disaster, strikes (except those involving the employees or agents of the party seeking the protection of this clause), civil disorder, health epidemic or pandemic, earthquake, tsunami, weather, or curtailment of transportation facilities. The ability to terminate this Agreement without liability pursuant to this paragraph is conditioned upon delivery of written notice to the other party setting forth the basis for such termination as soon as reasonably practical – but in no event longer than ten (10) days – after learning of such basis. Neither party hereto shall be obligated to perform any of its respective obligations hereunder to the extent such performance is prevented by Force Majeure.

**14. Governing Law; Arbitration.** This Agreement shall be governed and construed in accordance with the laws of the state of \_\_\_\_\_, without regard to its conflicts of law principles. The Parties irrevocably consent to the exclusive jurisdiction and venue of any state or federal court of competent jurisdiction in the Counties of \_\_\_\_\_ or \_\_\_\_\_, in any action, suit, or other proceeding

arising out of or relating to this Agreement, and waive any objection to venue based on the grounds of *forum non conveniens* or otherwise. Should any dispute arise between the Parties, the parties agree to discuss the issues and make good faith efforts to resolve the dispute informally. Should such efforts be unsuccessful, any and all disputes arising out of or relating to this Agreement or the services provided hereunder shall be submitted to binding arbitration before the American Arbitration Association (“AAA”) for resolution and shall be governed and construed in accordance with the laws of the State of \_\_\_\_\_, without regard to its conflicts of law provisions. The arbitration provision set forth in this section shall be the sole dispute resolution process regarding any controversy or claim arising out of or relating to this Agreement or the Services provided hereunder. The arbitration shall be conducted in \_\_\_\_\_, \_\_\_\_\_ in accordance with the AAA’s rules and procedures relevant to the claims asserted, except to the extent that such rules or procedures are modified in this Agreement. The arbitration shall be conducted on a confidential basis in accordance with the rules for selection of arbitrators set forth by AAA. The arbitrator may not consolidate more than one person’s claims, and may not otherwise preside over any form of a representative, class, or collective proceeding. The Parties irrevocably consent to the exclusive jurisdiction and venue of any state or federal court of competent jurisdiction in the County of \_\_\_\_\_, State of \_\_\_\_\_ for any proceeding to confirm, challenge or enforce an arbitrator’s award. The Parties acknowledge that the arbitration provision set forth in this section shall constitute a waiver of each party’s right to a jury trial. Each Party shall bear its own costs and expenses and an equal share of the arbitrators’ and administrative fees of arbitration. Notwithstanding the foregoing, either Party may seek emergency relief in court, without first resorting to good faith efforts to resolve the dispute informally, and prior to the appointment of any arbitrator; provided, however, that no monetary relief of any kind may be sought or awarded pursuant to this injunctive relief provision.

**15. Entire Agreement.** This Agreement constitutes the entire understanding of the Parties with respect to the matters set forth herein and supersedes all other agreements, promises, representations, and negotiations pertaining thereto.

**16. Amendment.** No waiver or modification of this Agreement or any of its provisions shall be effective unless it is in writing and signed by both Parties.

**17. Notices.** All notices shall be in writing and shall be deemed duly given on (i) the date of personal or courier delivery, with signed receipt; (ii) the date of transmission by facsimile, provided that the transmission is confirmed by a dated electronic confirmation; or (iii) three (3) business days after the date of deposit in the U.S. mail, postage prepaid, return receipt requested, to the addresses first listed above.

**18. Assignment.** This Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and permitted assigns. Notwithstanding the foregoing, XXXX may not assign this Agreement or delegate its duties. Any assignment in violation of this provision will be null and void. XXXX may transfer or assign its rights and obligations under this Agreement without the prior written consent of XXXX.

**19. Waiver.** The waiver by any party of any of its rights hereunder shall not operate or be construed as a waiver of that right or a waiver of any other right under this Agreement.

**20. Survival.** Any provision of this Agreement, the performance of which requires that it be in effect after the expiration and/or termination of this Agreement, shall survive such expiration and/or termination and shall remain operative and in full force and effect.

**21. Severability.** If any term or provision of this Agreement is found to be illegal or unenforceable, the remaining provisions of this Agreement will remain in full force and effect, provided that no Party is, as a result thereof, deprived of the enjoyment of its substantial benefits under this Agreement.

**22. Counterparts.** This Agreement may be executed in a number of counterparts, each of which will be deemed to be an original, but all of which together will constitute one and the same instrument. Signatures delivered by facsimile or other electronic means shall have the same legal effect as original signatures.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed, as of the date first above written, by their respective duly authorized officers or representatives.

**Xx**

**xxx**

---

---