

Facilities Use Agreement

(Name of Facility at specific campus)

University of Hawai'i

(Name of UH campus where Facility is located)

THIS FACILITIES USE AGREEMENT (“Agreement”), made and entered into this _____ day of _____, _____, but effective as of _____ (“Effective Date”), by and between the UNIVERSITY OF HAWAI‘I, the state university and a body corporate of the State of Hawai‘i, whose business address is 2444 Dole Street, Bachman Hall, Honolulu, Hawai‘i 96822 (“UH”), for the benefit of _____ (“UH Campus”), whose business address is _____, and _____, whose business and mailing address is _____, and telephone number is _____, and email contact address is _____ (“User”).

1. **Premises.** This Agreement covers User’s use of certain designated portions of the _____, situated upon the UH Campus, a map of which is attached hereto as Exhibit A and incorporated herein by reference (“Facility”).

2. **Use Area.** The portion of the Facility that User is authorized to use under this Agreement are designated and marked on the Facility map attached hereto as Exhibit B and incorporated herein by reference (“Use Area”).

3. **Purpose of Use.** User will use the Use Area to conduct the following activity or activities, which have been approved by the UH Campus, in accordance with the applicable UH and UH Campus policies and procedures:

_____ (Insert Description of Authorized activity at Facility)
 (collectively the “Authorized Activity”) and _____ people are expected to attend the Authorized Activity.

4. **User.** User is an organization that is affiliated with UH and is (check one of the following appropriate boxes):
- (i) Board of Regents or UH System chartered organization.
 - (ii) Registered student, faculty, or staff organization.
 - (iii) UH Campus chartered organizations.
 - (iv) University of Hawai‘i Foundation.
 - (v) The Research Corporation of the University of Hawai‘i
 - (vi) Ahahui Koa Anuenue.
 - (vii) University Clinical, Education, and Research Associates dba University Health Partners of Hawai‘i.
 - (viii) Hawai‘i State Cancer Consortium.
 - (ix) Other UH affiliated organization (Describe affiliation: _____)

5. **Use Date.** User is authorized to use the Use Area on the following dates and times (collectively the “Use Times”):

a. **One time event.** User will conduct its Authorized Activity within the Use Area on _____ day of _____, 20_____, from _____ through and inclusive _____ (“Start Date”).

b. **Multiple events.** User is authorized to conduct its Authorized Activity within the Use Area on the following dates: _____, with the first of these dates to be the Start Date [or every _____ for the following months: _____, during the 20 _____ calendar year (except when precluded by UH related activities), with the first of these dates to be the Start Date].

(Insert Date(s))

(Day(s) of the week)

(Month(s) of the year)

(Year)

6. **User Representation.** User hereby confirms that User has completed the application/reservation form for use of the Use Area (a copy of which is attached hereto as Exhibit C and incorporated herein by reference) and all information contained therein is true and correct, including that the Authorized Activity satisfies and will continue to satisfy all UH requirements during the term of this Agreement. If UH discovers, learns, or becomes aware that any such information is not true and correct, UH may: (a) immediately stop or suspend User’s Authorized Activity, (b) delay or postpone the Start Date, (c) cancel the Use Times, (d) immediately terminate this Agreement, (e) hold User responsible for all applicable fees and charges, including, without limitation, any cancellation or termination charges, and (f) require User to meet all of User’s obligations under this Agreement (such as User’s obligation to indemnify, defend, and hold harmless UH, require or have User’s insurance cover any claims, injuries, damages, and losses, and clean up and restore the Use Area), particularly with respect to events or incidents that arose prior to such termination.

7. **Use Fee and Extraordinary Charges.**

a. **Use Fee.** User shall pay to UH a use fee (“Use Fee”) at a rate of \$ _____ per day during the Use Times and a cumulative amount of \$ _____ for the use of the Use Area during the Use Times to Area during each of the Use Times to conduct the Authorized Activity (the “Use Fee”). UH hereby reserves the right to increase the Use Fee and/or adjust the manner in which the Use Fee is assessed depending on whether User should more appropriately classified into a different User category. To confirm this, UH reserves the right to review and/or audit User’s financial records relating to the conduct of the Authorized Activity (“Financial Records”). User shall also be required to pay UH for any extraordinary charges, after-hours usage, late fees, and other charges that are incurred in connection User’s use of the Use Area beyond or outside of the authorized Use Times.

(Insert dollar amount)

(Insert dollar amount)

b. **Reimbursable Expenses.** If appropriate, UH may require User to pay for any extraordinary charges that may be incurred by UH in connection with making the Use Area available during the Use Times for User’s Authorized Activity (collectively the “Reimbursable Expenses”), including, without limitation, equipment rental, accelerated take down, set up, cleanup, and restoration charges, extended use fees for the Use Area, and any special arrangements such as arranging for: (1) extra UH staffing, including the presence of the event coordinator (the “Event Coordinator”), who will be appointed by the UH Campus, electricians, plumbers, and/or custodians, (2) any professional or other services that UH deems necessary to support User’s Authorized Activity, (3) the use of any audio, visual, acoustic, and lighting equipment not currently available at the Use Area, (4) the use of power in a magnitude and/or manner not current available at the Use Area, (5) the use of any internet, data transmission, or electronic alert or notification services not currently available at the Use Area, and (6) security services that require screening of attendees, participants, and workers and are necessary to secure areas of the Use Area, the Facility, and/or the UH Campus.

8. **Deposits/Payments.**

a. **Use Fee Payment.** Total payment of the Use Fee for User’s use of the Use Area and the conduct of the Authorized Activity thereon is required no later than fourteen (14) days prior to the Start Date (“Use Fee Payment Deadline”). If User fails to pay the remainder of the Use Fee over and above the Use Fee Deposit

(as defined herein) by the Use Fee Payment Deadline, UH may: (1) cancel User’s right to use the Use Area for User’s Authorized Activity during the Use Times and (2) retain User’s Use Fee Deposit.

b. **Deposit.** This Agreement will not be considered for execution by UH unless it is executed by User and returned to the Event Coordinator at the UH Campus with a User check or money order in the following amounts as the initial deposit (“Deposit”):

- (1) **Use Fee.** Twenty percent (20%) of the Use Fee (“Use Fee Deposit”).
- (2) **Reimbursable Expenses.** UH’s initial estimate of the anticipated amount of Reimbursable Expenses (“Reimbursable Expense Deposit”).

Any person signing on behalf of User expressly warrants that he/she is authorized by User to execute this Agreement.

c. **Next Payment.** User is required to remit to UH the balance of the Use Fee over and above the Use Fee Deposit no later than the Use Fee Payment Deadline.

d. **Final Total.** UH will compile and submit to User a final total of all fees and charges, particularly the Reimbursable Expenses, payable by User to UH for the use of the Use Area, with User receiving credit for the Use Fee Deposit and the Reimbursable Expense Deposit held by UH (“Final Total”). User shall pay to UH, within forty-eight (48) hours from the conclusion of User’s use of the Use Area and/or the Authorized Activity, a final payment in the amount of the Final Total less any applicable Deposit.

e. **Deposit forfeiture.** If User’s Authorized Activity and/or Use Times are cancelled by either User for any reason or UH for User’s failure to cure or correct User’s failure to perform any obligations under this Agreement, the Deposit may be retained by UH in accordance with paragraph 14 (Termination) of the attached Exhibit D (General Terms and Conditions).

9. **Binding Effect.** The term "UH" wherever used herein shall include the UNIVERSITY OF HAWAI‘I and its successors and assigns, and the term “User” wherever used herein shall include

_____, a _____, and
(Insert Name of UH Affiliated User) (Insert type of legal entity and state of formation)
 their successors and permitted assigns, and this instrument shall be binding upon and shall inure to the benefit of the parties hereto and their legal representatives, successors, and assigns.

10. **Notice.** Any notice, demand, request, consent, approval, or communication that either party desires or is required to give the other party or any other person shall be in writing and given by delivering the notice in person or by commercial courier, or by sending it by first-class mail, certified mail, return receipt requested, or overnight courier, return receipt requested, with postage prepaid:

<u>UH</u>	<u>User</u>
To: University of Hawai‘i	To: _____
UH Campus: _____	_____
Address: _____	_____
_____	_____
Attn: _____	Attn: _____
_____	_____
Phone: _____	Phone: _____
Cell: _____	Cell: _____
Fax: _____	Fax: _____
Email: _____	Email: _____

Any notice, demand, request, consent, approval, or communication that either party desires or is required to give to the other party shall be addressed to the other party at such other address as either UH or User may designate in writing as its new address for such purpose by notice given to the other in accordance with this Paragraph 10 (Notice). Any notice hereunder shall be deemed to have been given and received and effective two (2) days after the date when it is mailed, if sent by first-class, certified mail, one day after the date when it is mailed if sent by overnight courier, or upon the date personal delivery is made. For convenience, copies of notices may also be given by facsimile or email to the numbers set forth herein or such other number as may be provided from time to time.

11. **General Terms and Conditions.** User acknowledges and agrees that User shall be bound by and shall perform and comply with all of the terms and conditions contained in Exhibit D attached hereto and incorporated herein by reference.

IN WITNESS WHEREOF, User and UH have, by their duly authorized officers, duly executed and entered into this Agreement on the day and year first above written, to be effective from the Effective Date.

USER:

By: _____

Name of User Signatory

Title of User Signatory

Name of User Department/ Division/ Section

Date: _____

By: _____

Name of User Signatory

Title of User Signatory

Name of User Department/ Division/ Section

Date: _____

UH:

UNIVERSITY OF HAWAII

By: _____

Name of University Signatory

Title of University Signatory

Name of School or College

Name of Campus

Date: _____

By: _____

Name of University Signatory

Title of University Signatory

Name of School or College

Name of Campus

Date: _____

EXHIBIT A

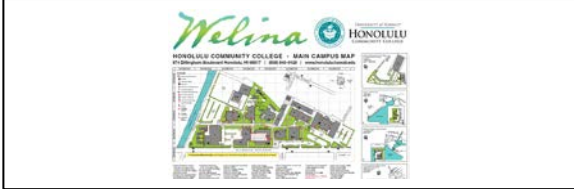
Map(s) of UH Campus

CHECK BOX BELOW FOR CAMPUS MAP THAT PERTAINS TO THIS FACILITIES USE AGREEMENT (refer to campus website MAP for larger view)

UNIVERSITY OF HAWAI'I MĀNOA



HONOLULU COMMUNITY COLLEGE



LEEWARD COMMUNITY COLLEGE



UNIVERSITY OF HAWAI'I WEST O'AHU



WINDWARD COMMUNITY COLLEGE



MAUI COLLEGE



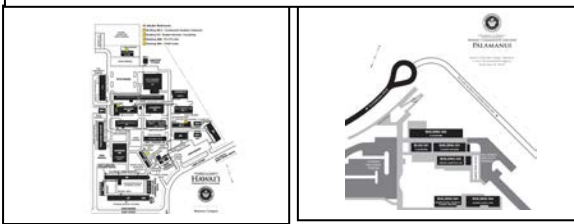
KAPĪ'OLANI COMMUNITY COLLEGE



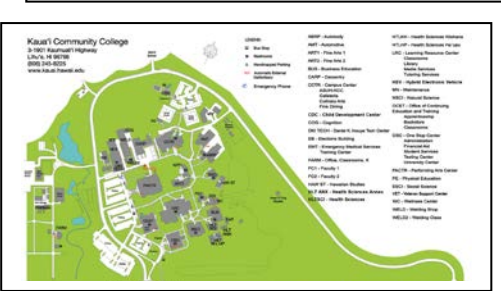
UNIVERSITY OF HAWAI'I AT HILO



HAWAI'I COMMUNITY COLLEGE AT MANONO (HILO) & PALAMANUI (KAILUA-KONA)



KAUAI COMMUNITY COLLEGE



Facilities Use Agreement- UH Affiliated User

(Name of Facility on specific campus)
University of Hawai'i

(Name of UH campus where Facility is located)

Note: This form to be used if: (1) expected attendance is more than 100 people, (2) time of use is more than 2 days or (3) the Rental Fee is more than \$5,000.

EXHIBIT B
Map of UH Campus Facility

[Name of Facility on that specific campus]
[insert below cross-hatched map of Facility and area to be used]

EXHIBIT C

User's Application to use Use Area During Use Times

[insert below USE APPLICATION/RESERVATION]

EXHIBIT D
General Terms and Conditions

1. **Defined Terms.** All terms defined in the Agreement to which this Exhibit D is attached shall be applicable to the general terms and conditions contained in this Exhibit E.

2. **Food Service.** Serving of food and/or beverages as part of the Authorized Activity should be arranged through the food and beverage concessionaire or vendor (the “Food Service Vendor”) retained by UH covering the specific facility on the UH Campus within which the Use Area is located. If UH does not have a contract with a Food Service Vendor covering the specific facility within which the Use Area is located, User may utilize other food service vendors provided that User obtains UH’s prior written approval. User must obtain the UH’s prior written approval for all such food and/or beverage arrangements and coordinate and work with the Event Coordinator on the serving of food and beverage as part of the Authorized Activity within the Use Area during the Use Times. Food and beverage service within the Use Area as part of the Authorized Activity is permitted if the Use Area is set up in classroom or banquet configuration. Food and beverages must be served and consumed in a separate part of the Facility outside of the Use Area if the Use Area is not configured for food and beverage service. The Event Coordinator will notify User regarding the extent to which User must make food service arrangements through the Food Service Vendor. User shall be fully responsible, at User’s sole cost and expense, for all food and beverage service arrangements with the Food Service Vendor or other vendor authorized by UH through the Event Coordinator and UH shall incur no responsibility in connection therewith, notwithstanding that UH approved the food and beverage agreements/arrangements. Neither UH nor the UH Campus shall be a party to such food and beverage service agreements/arrangements but User shall keep the Event Coordinator informed regarding the status of such agreements/arrangements subsequent to UH’s approval.

3. **Serving of Alcohol.** User may not serve or make available any alcoholic beverages unless and until User obtains the prior written approval of the Event Coordinator to serve or make available alcoholic beverages as part of the Authorized Activity within the Use Area. User shall:
 - a. **Evidence of compliance with laws.** Provide the UH and the Event Coordinator at least seven (7) days in advance of the Use Times written evidence of compliance with all applicable laws, statutes, ordinances, rules, regulations, orders, and directives of any federal, state, or county governments (collectively “Applicable Laws”), particularly with respect to the serving of alcoholic beverages within the Use Area during the Authorized Activity and the Use Times, the obtaining of any and all necessary governmental licenses and approvals, and the implementing of procedures to ensure that no alcohol is served or made available to minors.
 - b. **Comply with UH rules and policies.** Comply with all applicable UH Policies (as defined herein) and UH Campus rules, policies, and guidelines (“UH Campus Policies”) relating to the serving or making available of alcohol.
 - c. **Indemnify, defend UH.** Indemnify, defend, and hold harmless UH and the State of Hawai‘i, from and against any and all claims, demands, actions, causes of action, lawsuits, judgments, injunctions, penalties, liens, assessments, losses, liabilities, damages, costs, and expenses (including the fees and costs of counsel reasonably acceptable to UH) arising from any incident or accident involving any attendee or participant in User’s conduct of the Authorized Activity or the use of the Use Area, regardless of whether such incident or accident occurs within the Use Area, the Facility, or the UH Campus, or elsewhere. User agrees for purposes of assessing responsibility or liability under any Applicable Laws or otherwise, that User shall be the “host” or the party responsible for serving alcoholic beverages at the Use Area, the Facility, and the UH Campus.
 - d. **Insurance.** When UH or the UH Event Coordinator approves the serving of alcohol, User will obtain liquor liability insurance coverage for the Authorized Activity satisfactory to UH, with a minimum limit of \$1 million (and which could be increased at UH’s reasonable discretion) and provide to UH at least ten (10) days in advance of the Start Date a certificate of insurance confirming that User has obtained the required liquor liability coverage.

4. **Responsibility for Actions/Prohibited Behavior.** With respect to the Use Area, the Facility, and/or the UH Campus and User’s conduct of the Authorized Activity, User shall not and shall ensure that the User Agents shall not engage in any of the following conduct, and inform all Attendees (as defined herein) that the following conduct is prohibited:

- a. No unsafe behavior. Behave in an unsafe, careless, or negligent manner while on or within the Use Area, the Facility, and/or the UH Campus.
 - b. No overloads. Overload or cause to be overloaded any wall, floor, ceiling, stage, bandstand, or electric wiring.
 - c. No injury. Cause any act to be done which will injure or harm any person or persons or which will in any manner mar, deface, damage, or injure the Use Area, the Facility, and/or the UH Campus.
 - d. No alcohol or unlawful drugs. Permit the use of alcohol (or only to the extent permitted by the UH Campus under this Agreement) or unlawful drugs. There shall be no alcoholic beverages (or only to the extent permitted by the UH Campus under this Agreement) or unlawful drugs of any kind in the possession of any User Agents or User's participants or guests.
 - e. No smoke or odors. Produce any unusual, noxious or objectionable smoke, gases, vapors, or odors.
 - f. No smoking. Smoking of tobacco and any other products is prohibited on or within the UH Campus, including, without limitation, e-cigs and similar products.
 - g. No dangerous devices. Possess any unlawful or dangerous instrument, device or material.
 - h. No sign posting. Post signs on or within the Use Area, the Facility, and/or the UH Campus without prior written approval of the Event Coordinator.
 - i. No unlawful use. Make or cause any unlawful, unauthorized, or offensive use of the Use Area, the Facility, and/or the UH Campus.
 - j. No solicitation. Take up collections or make solicitations of any kind on, within, or involving the Use Area, the Facility, and/or the UH Campus during the term of the Agreement.
5. **Indemnify and Defend UH.** As a condition to the UH's grant of permission to User to use the Use Area to conduct the Authorized Activity herein, User shall, at all times, indemnify, defend with counsel reasonably acceptable to the UH, and hold harmless UH, UH's officers, employees, agents, representatives, and any person acting on behalf of UH (collectively the "UH Agents"), from and against any claims, demands, suits, actions, causes of action, judgments, injunctions, orders, rulings, directives, penalties, assessments, liens, liabilities, losses, damages, costs, and expenses (including the fees and costs of counsel reasonably acceptable to UH), by whomsoever incurred, sustained, or asserted, including, without limitation, claims for property damage, personal injury, bodily injury, death, lost revenues and other economic loss, and/or environmental damage, directly or indirectly arising from or connected with any of the following:
- a. Exercise of rights. The exercise of any rights or privileges under this Agreement by User or any of User's officers, employees, vendors, sellers, contractors, consultants, agents, representatives, and any person acting on behalf of User, including all members of the User's organization assisting with the planning, arrangements, and carrying out of the Authorized Activity and User's activities or use of the Use Area (collectively the "User Agents").
 - b. Act or omission. Any act or omission by User or any of the User Agents.
 - c. Casualty. Any accident, fire or other casualty on or near to the Use Area, the Facility, and/or the UH Campus, arising from events, occurrences, or incidents at, on, within, or attributable to the acts or omissions of User or the User Agents.
 - d. Violation. Any violation or alleged violation by User or any User Agents of any Applicable Laws (including, without limitation, Environmental Laws), arising from events, occurrences, or incidents at, on, within, or attributable to the Use Area, the Facility, and/or the UH Campus.
 - e. Loss. Any loss or theft whatsoever of any property placed or stored by User or any User Agents on or near the Use Area, the Facility, and/or the UH Campus.

- f. **Misrepresentation.** Any material misrepresentation or inaccuracy in any representation or warranty by User or any User Agents under this Agreement.
 - g. **Challenge.** Any challenge to the authority of: (1) User to negotiate, enter into, or execute this Agreement or (2) User and/or any User Agents to perform any obligations under this Agreement.
 - h. **Failure to perform.** Any failure by User or any User Agents in whole or in part, to fully and properly perform any of the terms and conditions contained in this Agreement, including, without limitation, the breach or default by User or any User Agents in the performance of any of said terms and conditions of this Agreement.
 - i. **Removal.** Any enforcement by UH of any provision of this paragraph 5 and any costs incurred in duly removing User or any of the User Agents from the Use Area, the Facility, and/or the UH Campus and/or restoring the same as provided herein.
 - j. **UH enforcement.** Any actions by UH or others to enforce the terms and conditions of this Agreement, including the performance of any of the obligations of User or any User Agents hereunder.
6. **Insurance.** User shall, and shall ensure that all User Agents shall, during the entire term of this Agreement, at no cost to UH, procure and maintain, or cause to be procured and maintained, the following insurance described below, issued by an insurance company or companies authorized to do business in the State of Hawai'i and reasonably satisfactory to UH:

a. **Required Insurance Coverage.**

- (1) **Commercial General Liability.** Commercial general liability insurance covering claims with respect to injuries or damages to persons or property sustained as a result of the activities of User and/or the User's Agents, including any of the User's contractors within, on, or about the Use Area, the Facility, and/or the UH Campus, with minimum combined single limits of liability no less than the following:

Property damage per occurrence:	\$1,000,000.00
Personal injury or death:	
Per person per occurrence	\$1,000,000.00
Per occurrence	\$1,000,000.00
Products liability:	
Per person per occurrence	\$1,000,000.00
Per occurrence	\$1,000,000.00

Such limits may be achieved through the use of umbrella liability insurance sufficient to meet the requirements of this paragraph 5 (Insurance) covering User's conduct of the Authorized Activity on or within the Use Area, the Facility, and/or the UH Campus and all of the activities and operations of the User and the User Agents in connection therewith.

- (2) **Automobile Insurance.** Automobile Liability Insurance to include coverage for any owned, non-owned, or hired automobiles with limits of: \$1,000,000 per Person/\$1,000,000 per Accident - Bodily Injury; \$1,000,000 per Accident - Property Damage; and Basic No-Fault coverage as required by Hawai'i law. In the event there is a change in the Applicable Laws in Hawai'i regarding financial responsibility and insurance requirements of automobile owners or users which make this requirement obsolete, UH shall have the right to impose a new requirement consistent with the then Applicable Laws.
- (3) **Workers' Compensation Insurance.** Workers' Compensation insurance with respect to work by employees of the User and the User Agents on or about the Use Area, the Facility, and/or the UH Campus.
- (4) **Pollution Liability Insurance.** Pollution Liability Insurance for environmental liabilities, which would include, but are not limited to, claims for bodily injury, property damage, environmental damage, and remediation costs resulting from pollution conditions caused by the User or the User Agents, the conduct of

the Authorized Activity, or any activities of the User or the User Agents relating thereto, with a combined single limit coverage of not less than \$2,000,000.00 per occurrence. [Note: Optional based on UH Campus determination as to the extent hazardous materials may be used or involved with Authorized Activity].

- b. Common provisions. Each insurance policy that User and/or any of the User Agents are obligated to obtain under this Agreement shall be subject to the following:
- (1) Notice of change. All insurance policies required under this Agreement shall contain a clause to the effect that should any of the insurance policies be limited in scope, changed, or cancelled before the expiration date thereof, the insurer shall provide User and UH with notice in accordance with the policy provisions or, if sooner, as required by law. User shall, and shall ensure that the User Agents shall, provide UH notice of (a) any act or omission by User or the User Agents that would allow the insurer to terminate or modify any of the insurance coverage within two (2) business days of such act or omission (including, but not limited to, failure to renew an insurance policy or pay a required premium therefor) and (b) notice of cancellation, limitation in scope, material change, or non-renewal by the insurer within two (2) business days of receipt.
 - (2) Insurance obtained by UH shall apply in excess of User insurance. Any insurance maintained by UH will apply in excess of, and not contribute with, insurance provided or obtained by User and/or any User Agents under this Agreement.
 - (3) UH as additional insured. User shall, and shall ensure that the User Agents shall, name UH, the UH Agents, and those persons or entities identified in writing from time to time by UH to User as additional insured on the insurance policies for all insurance coverage User and/or the User Agents are obligated to obtain under this Agreement, except for Workers' Compensation and Employer's liability insurance.
 - (4) Waiver of subrogation endorsement. All insurance required under this Agreement will contain a waiver of subrogation endorsement in favor of UH.
 - (5) UH not required to pay premiums. User and the User Agents shall be solely responsible for the costs of procuring and maintaining the insurance coverage described in this Agreement and shall not charge UH or expect UH to pay any portion of the premiums or charges to obtain the insurance coverage required under this Agreement.
 - (6) Acceptable deductibles. The terms and amounts of any deductibles for the insurance policies required under this Agreement must be reasonable and acceptable to UH based upon the type of insurance involved and the nature of the Authorized Activity, User's use of the Use Area, and/or the conduct of the Authorized Activity on or within the Use Area, the Facility, and/or the UH Campus.
- c. Deposit insurance certificates. User shall, and shall ensure that the User Agents shall (a) deposit with UH, at least fourteen (14) days prior to the Start Date, certificates of insurance necessary to satisfy UH that the insurance provisions of this Agreement have been fully complied with and (b) keep such insurance in effect and the certificates therefor on deposit with UH during the entire term of this Agreement.
- d. UH may cure failure to obtain/maintain insurance. Upon failure by User or any User Agents to provide and maintain the insurance required herein after a ten (10) day prior written notice to comply from UH, UH may, but shall not be required to, procure such insurance at the sole cost and expense of User, and User shall be obligated to immediately reimburse UH for the cost thereof plus ten percent (10%) to cover UH's administrative overhead.
- e. Lapse in insurance constitutes a breach. Any lapse in, or failure by User or any User Agents to procure, maintain, and keep in full force and effect such insurance coverage as is required under this Agreement, at any time during and throughout the term of this Agreement, shall be a breach of this Agreement and UH may terminate the rights of User and all User Agents to access and/or use the Use Area, the Facility, and/or the UH Campus.
- f. Insurance shall not limit User liability. The procuring of such required policy or policies of insurance shall not be construed to limit User's liability hereunder or to fulfill User's indemnification, defense, and hold harmless obligations and requirements of this Agreement. Notwithstanding said policy or policies of insurance, User shall be

obligated for the full and total amount of any damage, injury, or loss arising from acts or omissions of User and/or the User Agents.

- g. UH may adjust insurance requirements. UH may, upon reasonable notice and reasonable grounds, increase or change the form, type, coverage, or coverage limits of the insurance required hereunder, in which event User shall cause User and the User Agents to obtain such required insurance. UH requirements shall be reasonable and shall be designed to provide protection from and against the kind and extent of risks that exist at the time a change in insurance is required. User shall be obligated to meet and satisfy all UH risk management requirements that are in effect as of the Effective Date and as the same may be amended from time to time.
7. **Comply with Applicable Laws.** In using the Use Area, User shall comply, and shall ensure that the User Agents shall comply, with all Applicable Laws and all applicable UH and UH Campus rules, policies, procedures, and guidelines relating to the use of the Use Area, the Facility, and/or the UH Campus (collectively the “UH Policies”).
8. **User Responsibility for User Agents and Attendees.** User shall be responsible for the conduct of all of those involved with User’s use of the Use Area and the conduct of the Authorized Activity, including, without limitation, all User Agents and the attendees and participants (collectively the “Attendees”). Smoking of any substance in any form (whether cigarettes, cigars, or e-cigs) anywhere within the Use Area, the Facility, and/or the UH Campus is prohibited.
9. **User Responsibility for Cleanup.** At the end of each day of User’s Authorized Activity, the User shall be responsible, at User’s sole cost and expense, for: (a) removing and disposing of all trash, debris, and rubbish generated from or by User’s Authorized Activity or User’s use of the Use Area, (b) removing all equipment, vehicles, trailers, tents, booths, signs, temporary structures, devices, tools, and other personal property (collectively the “Personal Property”) and (c) cleaning up and restoring the Use Area to the condition it was in before User’s use of the Use Area, in accordance with the guidelines furnished by the Event Coordinator, immediately following the end of each day of User’s Authorized Activity.
- a. User failure to clean up. If User fails to remove and/or clean up and restore the Use Area, the Facility, and/or the UH Campus, to the same condition as required hereunder, as determined by UH, UH may complete such restoration, removal, and clean-up, at the cost and expense of User, which amount User shall immediately pay to UH upon demand by UH plus ten percent (10%) for UH’s administrative overhead.
- b. User failure to remove Personal Property. In the event User fails to timely remove the Personal Property from the Use Area, the Facility, and/or the UH Campus, UH may, but shall not be obligated to do either of the following, all without liability to User and/or the User Agents: (i) remove the Personal Property, and treat the Personal Property as abandoned and dispose of the same, or (ii) store the Personal Property at the sole cost and expense of User, which amount User shall immediately pay to the UH upon demand by UH, plus ten percent (10%) for UH’s administrative overhead. User’s Use Times shall include time necessary to complete such cleanup and restoration of the Use Area.
- c. Multiple Use Times. If User has scheduled consecutive multiple dates of use, User may be excused from completing such cleanup and restoration at the end of each day of its Authorized Activity, provided that User obtains the Event Coordinator’s prior written approval and pays UH the cost of securing the Use Area during the authorized Use Times and provided further that User cleans up, clears, and restores the Use Area in accordance with this paragraph 9 on or after the final day of the multiple date use. This responsibility shall include moving and rearranging equipment, barriers, barricades, signs, furniture, and furnishings to its original condition or such condition as may be directed by the Event Coordinator.
10. **User Responsibility for Damage.** User shall be responsible, at its sole cost and expense, for repairing any damage to the Use Area, the Facility, and/or the UH Campus that is caused by or attributable to User’s use of the Use Area, the Facility, and/or the UH Campus, including any damage caused by User, the User Agents, and/or the Attendees.
- a. User to obtain approval for repairs. In effecting such repairs, User acknowledges that User will need to obtain the Event Coordinator’s prior written approval for any such repairs (which may need to be coordinated with other UH and UH Campus personnel responsible for the maintenance and upkeep of the Use Area, the Facility, and/or the UH Campus). Depending on the extent of the necessary repairs, UH may need to have such repairs performed and completed, all at User’s cost and expense.

- b. User to deposit estimated repair costs. User may be required to deposit the estimated cost of such repairs with UH before the commencement of any repair work and pay any additional costs incurred upon demand from UH, plus ten percent (10%) to cover UH's administrative overhead. Initial payment to repair any such damages shall be made within fourteen (14) days after the end of User's Authorized Activity or Use Time during which such damage occurred or was discovered.
- c. UH not responsible for damage or theft. Neither UH nor the UH Campus shall be responsible for damage, vandalism or theft to the property of User, the User Agents, and/or the Attendees including, but not limited to, damage, vandalism or theft of property (such as automobiles and their contents) occurring on or within the Use Area, the Facility, and/or the UH Campus.
11. **Security.** User shall implement the security requirements, including retaining, at User's sole cost, the minimum number of law enforcement officers as may be required and approved by the Event Coordinator. In addition, User shall, at its sole cost and expense, pay the UH Campus for providing any UH Campus security guards to monitor User's Authorized Activity and use of the Use Area during the Use Times.
- a. Event Coordinator to determine security needed. The number of UH Campus security guards and the level of security will be determined by the Event Coordinator depending in part on the expected number of vendors, Attendees, and participants at each Authorized Activity of User.
- b. Campus Security Vendor. User acknowledges that the UH Campus has made arrangements for security guard services with a vendor ("Security Vendor") covering the UH Campus and that User may be required to make security guard arrangements with the Security Vendor to cover User's Authorized Activity and User's use of the Use Area.
- c. Security guard response. User also acknowledges that if UH Campus security guards, who provide campus security services for the UH Campus are required to respond to User's Authorized Activity and User's use of the Use Area, User shall be responsible for any costs of such response attributable to User, User's Authorized Activity, and/or User's activities or use of the Use Area.
12. **No License to Use UH Marks.** Except as otherwise provided in this Agreement, neither User nor the User Agents shall use UH's or the UH Campus' name, insignia, logo, picture, or any other material that might create the impression of an association or affiliation without the prior written consent of UH and the UH Campus. If such consent is given, UH and the UH Campus shall have the right to review all material produced for or by User and/or the User Agents which uses UH's and/or the UH Campus' name, insignia, logo, picture, symbol, or mark, and/or any material that might create the impression of an association or affiliation.
13. **Promotional Materials.** User shall obtain the Event Coordinator's prior approval for all promotional material to be used by User to market or publicize User's Authorized Activity or use of the Use Area, including, without limitation, flyers, posters, press releases, advertising copy, electronic media, internet websites, the meeting or conference agenda, program information, and all information regarding User's Authorized Activity or use of the Use Area that will be uploaded to or available electronically in any form (e.g., website, twitter, Instagram, Facebook, etc.). Unless otherwise approved in writing by the Event Coordinator, User's promotional materials shall clearly indicate that the Authorized Activity or use of the Use Area are not sponsored by UH or the UH Campus and is not an official UH or UH Campus event.
14. **Termination.**
- a. Up to 45 days prior to the Start Date. Up to 45 days prior to the Start Date, UH may terminate this Agreement at any time, upon fourteen (14) days' prior written notice from UH to User and opportunity to cure if User fails to timely perform or comply with any of User's obligations under this Agreement, including, without limitation, failing to timely and fully make any of the required Deposits and/or User Fee payments, obtain the required insurance, obtain any necessary approvals, and/or timely confirm arrangements have been made with the Event Coordinator for Use Area set up, security, food/beverage service, a proper liquor license, etc. Based on such termination, User shall be responsible for any and all costs that UH may incur in connection with User's failure to perform or comply with any of User's obligations in this Agreement, including, without limitation, forfeiting such portions of the Use Fee Deposit and/or the Reimbursable Fee Deposit as may be necessary to cover such costs incurred by UH.

- b. Between 45 Days and Up to 10 Days Prior to the Start Date. At any time between 45 days prior to the Start Date and up to ten (10) days prior to the Start Date, UH may terminate this Agreement at any time, upon ten (10) days prior written notice from UH to User and opportunity to cure if User fails to timely perform or comply with any of User's material obligations under this Agreement, including, without limitation, failing to timely or fully make any Deposit or Use Fee payments, obtain the required insurance, obtain any necessary approvals, and/or timely confirm arrangements have been made with the Event Coordinator for Use Area set up, security, food/beverage service, a proper liquor license, etc. Based on such termination, User shall be responsible for any and all costs that UH may incur in connection with this Agreement prior to UH's termination for User's failure to perform or comply with any of User's obligations hereunder and in connection therewith, User shall forfeit fifty percent (50%) of the Use Fee Deposit and all of the Reimbursable Expense Deposit
- c. Within 10 Days of the Start Date and During the Use Times. At any time within ten (10) days prior to the Start Date and during the Use Times, if User fails to timely perform or comply with any of User's material obligations under this Agreement, UH shall notify User in writing of such failure or non-compliance, and upon receipt of such written notice, User shall have twenty-four (24) hours to perform or comply with User's obligation hereunder. If User fails to perform or comply with its obligations under this Agreement within such 24-hour period, UH may immediately terminate this Agreement. User's material obligations under this Agreement, include, without limitation (1) failure to timely or fully make any required payments to User Agents, such as the Food Service Vendor the Security Vendor, or any other vendor, seller, contractor, consultant, and/or agent, (2) failure to obtain and/or maintain the required insurance, (3) failure to confine its activities to only the Authorized Activity, (4) failure to timely pay any extraordinary charges and/or Reimbursable Expenses, (5) failure to clean up and restore the Use Area and the Facility, (6) failure to repair any damage to the Use Area and/or the Facility, (7) failure to obtain any necessary approvals from the Event Coordinator and the UH Campus, (8) failure to coordinate with and/or comply with the Event Coordinator's directions or instructions, (9) failure to ensure User Agents do not damage the Use Area or the Facility and/or comply with Applicable Laws or UH Policies, and/or (10) failure to comply with and to ensure that User Agents and Attendees comply with the conduct requirements described in paragraph 4 (Responsibility for Actions/Prohibited Behavior) herein. Based on such termination, User shall forfeit to UH one hundred percent (100%) of the Deposit and shall pay to UH any and all costs that UH may incur and/or have incurred in connection with User's failure to perform or comply with any of User's obligations in this Agreement.
- d. User's surviving obligations. Notwithstanding any such termination, at least the following User obligations will survive and continue with respect to any claims or matters arising or occurring prior to such termination: (a) any User payment obligation, including any cancellation or termination charges, (b) any User obligation to indemnify, defend, hold harmless UH, the UH Agents, and/or the State of Hawai'i, (c) any User obligation to maintain , cleanup, and restore the Use Area, the Facility, and/or the UH Campus, (d) any User obligation to provide and maintain required insurance coverage, and (e) any User obligation to remove hazardous materials from the Use Area attributable to the User's use of the Use Area, the Facility, and/or the UH Campus, and clean-up, remediate, and restore said affected areas.
- e. Suspension of privilege to reserve/rent UH facilities. If User fails to perform any of its obligations under this Agreement, including failing to pay to UH the Final Total, failing to clean up, remediate, and restore the Use Area and the Facility, or failing to perform any of User's surviving obligations as described in paragraph 14d (User's surviving obligations) herein, User, in addition to forfeiting the Deposit to UH and being responsible for all costs incurred by UH in connection with User's failure to perform or comply with any of User's obligations, shall not be permitted to rent or use the Use Area, the Facility, and/or any other facilities upon the UH Campus or on any other UH campus for a minimum of six (6) months and possibly as long as one-year.. UH reserves the right to impose a longer term prohibition on User if UH or the UH Campus deems such longer prohibition warranted or justified in light of User's failure or failures to perform or comply with its obligations under this Agreement (e.g., if User fails to perform under any Agreement subsequent to any prior suspension of privileges to rent or use the Use Area, the Facility, and/or any other facilities upon the UH Campus or on any other UH campus).
15. Hazardous Materials. User shall not and shall ensure and require that the User Agents do not, cause or permit:(a) the escape, disposal, or release of any Hazardous Materials (as defined herein) except as permitted by law, (b) the storage or use of such Hazardous Materials in any manner not sanctioned by law or the highest standards prevailing in the industry for the storage and use of such Hazardous Materials, or (c) such Hazardous Materials to be brought on or within the Use Area, the Facility, and/or the UH Campus, except to use in the ordinary course of business, and then only after written notice is given to UH of the identity of such Hazardous Materials and upon UH's consent, which consent may be withheld at UH's sole and absolute discretion.

- a. **Remediate, clean up and restore.** In the event that any Hazardous Materials are used, stored, treated, or disposed on or within the Use Area, the Facility, and/or the UH Campus, or handled, discharged, released, or determined to be present on or from the Use Area, the Facility, and/or the UH Campus, due to, caused by, or attributable to the acts or omissions of User and/or any of the User Agents or the Attendees, User shall, at User's cost and expense and at no cost to UH, remediate the affected portions of the Use Area, the Facility, and/or the UH Campus, of any such Hazardous Materials, and dispose/remove said Hazardous Materials. In addition, User agrees to restore the affected portions of the Use Area, the Facility, and/or the UH Campus, at User's cost and expense and at no cost to UH, to the same condition in which they existed at the commencement of this Agreement, to UH's satisfaction.
 - b. **Failure to remediate and restore.** In the event User fails to restore the affected portions of the Use Area, the Facility, and/or the UH Campus to the same condition as required hereunder, as determined by UH, after a ten (10) day prior written notice to comply from UH, User agrees that UH may complete such restoration at the cost and expense of User, which amount User shall immediately pay to UH upon demand by UH, plus ten percent (10%) for UH's administrative overhead.
 - c. **Indemnify and defend.** User shall indemnify, defend with counsel reasonably acceptable to UH, and hold harmless UH and the UH Agents from any liability that may arise in connection with, or by reason of, the release or presence of Hazardous Materials or any occurrence involving any Hazardous Materials that may be alleged to be connected to, or related in any way with User's Authorized Activity, use of the Use Area, and/or UH making the Use Area available to User.
 - d. **Hazmat definition.** "Hazardous Materials" means any substance, element, compound, mixture or solution: (a) the presence of which requires investigation or remediation under any federal, state or county statute, regulation, ordinance, order, action, and/or policy (collectively the "Environmental Laws") or common law; or (b) which is now or at any time hereafter in effect becomes defined as a "hazardous waste," "hazardous substance," pollutant or contaminant under any Environmental Laws; petroleum, fuel oil, sludge, crude oil or residue, trichloropropane; or (c) which is toxic, explosive, corrosive, flammable, infectious, radioactive, carcinogenic, mutagenic, or otherwise hazardous and is or becomes regulated by any governmental authority; or (d) the presence of which causes or threatens to cause a nuisance upon or within the Use Area, the Facility, and/or the UH Campus, or to adjacent properties or poses or threatens to pose a hazard to the health or safety of persons, to property or to the environment.
16. **Dispute resolution.** In the event a dispute arises between the parties concerning any aspect of this Agreement, the parties agree to negotiate face-to-face within twenty (20) days of receipt of a letter describing the nature of the dispute and referencing this paragraph of the Agreement. In the event the matter is not resolved by negotiation within thirty (30) days of this initial negotiation meeting, the parties shall engage a mediator and attempt to mediate the dispute. The parties agree to try in good faith to settle the dispute by mediation under the applicable mediation rules of a mutually acceptable alternative dispute resolution firm, before resorting to litigation. If the dispute is not resolved by mediation within sixty (60) days of the initial mediation meeting or such further time as the parties may agree to or that the mediator deems is needed, any party may commence a legal action in the Circuit Court of the First Circuit, State of Hawai'i.
17. **Assignment.** UH may assign or otherwise transfer any interest in this Agreement without User's consent. In making such assignment or transfer, UH will require the assignee or transferee to assume and be responsible for all of the UH's obligations under this Agreement with respect to the interest in or portion of the Use Area, the Facility, and/or the UH Campus, acquired by such assignee or transferee.
- a. **UH assignee entitled to UH rights.** To the extent that UH transfers or assigns UH's interest under this Agreement, UH's assignee or transferee shall be entitled to all of UH's rights and benefits under this Agreement, including, without limitation, the benefit of User's indemnity and insurance obligations hereunder.
 - b. **User may not assign without UH consent.** User may not assign or otherwise transfer any interest, right, liability, or obligation in this Agreement without UH's prior written consent and any such assignment or transfer shall not release or discharge User, User Parent, and/or any of their obligations under this Agreement, including the User Parent Guarantee.
18. **Amendment.** This Agreement shall not be amended except in writing signed by the parties.
19. **Counterparts; facsimile signatures.** This Agreement may be executed in counterparts, each of which shall be deemed an original, and said counterparts shall together constitute one and the same agreement, binding all of the parties hereto,

notwithstanding all of the parties are not signatory to the original or the same counterparts. For all purposes, including, without limitation, recordation, filing, and delivery of this instrument, duplicate unexecuted pages of the counterparts may be discarded and the remaining pages assembled as one document. The submission of a signature page transmitted by email or facsimile (or similar electronic transmission facility) shall be considered as an “original” signature page for purposes of this Agreement.

20. **User representations.** In addition to any other representations and warranties contained in this Agreement, User represents and warrants to UH as of the earlier of the execution date or the Effective Date of this Agreement that:
- a. **Duly organized.** User is duly organized, validly existing, and in good standing in the jurisdiction of its formation.
 - b. **Full right and authority.** User has the full right and authority and has taken all requisite corporate or other action to enter into, execute, deliver, and perform its obligations under this Agreement.
 - c. **Has obtained all requisite approvals.** User has obtained all approvals and consents that are necessary to fully authorize and empower User to validly enter into this Agreement and to perform all of the obligations of User under this Agreement.
 - d. **Agreement is a binding obligation.** User represents and warrants that this Agreement constitutes a legal, valid, and binding obligation enforceable against User in accordance with its terms, except as may be limited by applicable bankruptcy, insolvency, reorganization, moratorium, and other similar laws now or hereafter in effect relating to creditors' rights generally.
 - e. **No litigation or investigation.** There is no litigation, action, proceeding or investigation pending or, to the best of User's knowledge, threatened before any court or other governmental authority by, against, or involving any of User's business or assets that would affect User's ability to carry out User's obligations under this Agreement.
 - f. **No other breach.** Neither the execution and delivery of this Agreement by User nor User's compliance with any of the terms and conditions of this Agreement will result or results in a condition or event that would constitute (or that upon notice or lapse of time or both would constitute) an event of default under any material contractual obligation of User in any other agreement to which User is a party.
21. **Severability.** If any provision of this Agreement or the application thereof to any person, entity, or circumstance shall, to any extent, be deemed invalid, void, or unenforceable by a court of competent jurisdiction, the remainder of this Agreement, or the application of such provision to persons, entities, or circumstances other than those as to which it is invalid, void, or unenforceable, shall not be affected thereby, and each other provision of this Agreement shall be valid and enforceable to the full extent permitted by law.
22. **Governing Law; Jurisdiction.** This Agreement shall be governed by, interpreted, construed, and enforced in accordance with the laws of the State of Hawai'i. UH and User agree that the Circuit Court of the First Circuit shall have jurisdiction over this matter to enforce the terms of this Agreement.
23. **Waiver.** Any waiver of the terms, conditions, or provisions of this Agreement or a party's rights or remedies under this Agreement must be in writing to be effective. Failure, neglect, or delay by a party to enforce the terms, conditions, or provisions of this Agreement or such party's rights or remedies at any time, will not be construed as a waiver of such party's rights under this Agreement and will not in any way affect the validity of the whole or any part of this Agreement or prejudice such party's right to take any subsequent action. No exercise or enforcement by any party of that party's rights or remedies under this Agreement will preclude the enforcement by such party of any of its other rights or remedies that are available under this Agreement or by law.
24. **Force Majeure.**
- a. **Obligations.** During the duration of the Force Majeure Events (as herein defined), neither party shall be liable for any failure, delay, or interruption in performing its obligations hereunder due to causes or conditions beyond its reasonable control, including (but without limitation thereto) strikes, boycotts, picketing, slow-downs, work stoppages, or labor troubles of any other type, restrictions or requirements imposed by any present or future Applicable Laws; or by priorities, rationing, curtailment, or shortage of labor or materials, or by war, acts of terrorism, or any matter or thing resulting therefrom, or by embargoes, acts of God, severe weather or climatic

conditions (such as storms, hurricanes, typhoons, earthquakes, tornadoes, volcanic eruptions, earth movements, tsunamis, and floods), acts of the public enemy, acts of superior governmental authority, riots, rebellion, sabotage, or by any other cause or causes beyond the reasonable control of the parties (hereafter the “Force Majeure Events”).

b. **Not excused from performance.** User, however, shall not be excused from performing its obligations under this Agreement, if and to the extent that User was provided access to the Use Area during the Use Times, in which case User will be responsible: (1) for the payment of amounts due to UH and (2) to perform User’s obligations under this Agreement.

25. **Entire Agreement.** The parties intend that this Agreement (including all of the exhibits and attachments which are made a part of this Agreement) shall be the final expression of their entire agreement with respect to the subject matter hereof and may not be contradicted by evidence of any prior or contemporaneous written or oral agreements or understandings. The parties further intend that this Agreement shall constitute the complete and exclusive statement of its terms and that no extrinsic evidence whatsoever (including prior drafts hereof and changes therefrom) may be introduced in any judicial, administrative or other legal proceeding.

26. **No Partnership.** It is not intended by this Agreement to, and nothing contained in this Agreement shall, create any partnership, joint venture, or other similar relationship between UH and User

27. **Non-Liability of Individuals.** Neither UH nor any UH officer or employee shall be charged personally by User with any liability, or be held liable to User under any term, condition, covenant, or provision of this Agreement, or because of its execution or attempted execution, or because of any breach, or attempted or alleged breach, thereof.

28. **Cross-Default.** User’s failure to comply with this Agreement shall constitute a breach by User under any other agreements with UH. User’s failure to comply with any other agreement or commitment made by User to UH shall constitute a breach and default by User under this Agreement. Without limiting UH’s remedies under any agreements with User, UH shall have the right to terminate any or all of its obligations to User and User’s rights under any agreements with UH, including this Agreement, if User shall breach any User obligation and/or commitment made by User to UH.

29. **No Property Interest Transferred.** User understands and agrees that User is not acquiring any property interest of any kind in any UH owned lands or the right to use or occupy the Use Area, the Facility, and/or the UH Campus, beyond that which is specifically permitted hereunder with respect to the conduct of the Authorized Activity within the Use Area during the Use Times. User is not entitled to, and UH is not obligated to grant to User any rights to, use the Use Area beyond the Use Times.