

Facilities Use Agreement for Short-Term Use

(Name of Facility at specific campus)

University of Hawai‘i

(Name of UH campus)

THIS FACILITIES USE AGREEMENT (“Agreement”), made and entered into this _____ day 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 _____ (“User”).

1. **Premises; Use Area.** This Agreement covers User’s use of certain designated portions of the _____, situated upon the UH Campus (“Facility”). The portion of the Facility that User is authorized to use under this Agreement is _____ (“Use Area”).

2. **Purpose of Use.** User will use the Use Area to conduct the following activity or activities: _____ (collectively the “Authorized Activity”) and _____ people are expected to attend the Authorized Activity. User represents and warrants that the Authorized Activity satisfies and will continue to satisfy all applicable UH and UH Campus policies and procedures during the term of this Agreement.

3. **User.** User is an organization 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: _____)

4. **Use Date.** User is authorized to use the Use Area on the following dates and times (collectively the “Use Times”): from _____, 20____ through and inclusive of _____, 20____, from ____ am to ____ pm. The first day of use is referred to herein as the “Start Date.”

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

5. **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 A** and incorporated herein by reference) and all information contained therein is true and correct.
6. **Rental Fee and Extraordinary Charges.**
- a. **Rental Fee.** User shall pay to UH a rental fee (“Rental Fee”) in the amount of \$ _____.
(Insert dollar amount or indicate if fee is waived)
 for the use of Use Area during the Use Times to conduct the Authorized Activity. Total payment of the Rental Fee is required at the time of execution of this Agreement.
- b. **Extraordinary charges.** User shall be responsible for any extraordinary charges assessed by UH to cover costs UH incurs in connection with the Authorized Activity and UH will furnish to User an estimate of such charges prior to the Start Date.
- (1) **Examples.** Examples of extraordinary charges include accelerated take down, set up, cleanup, and restoration charges, extended use fees for the Use Area, and any special arrangements such as arranging for: (a) extra UH staffing, including the presence of an event coordinator (“Event Coordinator”) who will be appointed by the UH Campus, electricians, plumbers, and/or custodians, (b) any professional or other services that UH deems is necessary to support User’s Authorized Activity, (c) the use of any audio, visual, acoustic, and lighting equipment not currently available at the Use Area, (d) the use of power in a magnitude and/or manner not currently available at the Use Area, (e) the use of any internet, data transmission, or electronic alert or notification services not currently available at or from the Use Area, and (f) security services that require screening of attendees, participants, and workers and are necessary to secure areas within the Use Area, the Facility, and/or the UH Campus, that UH deems is necessary to support User’s Authorized Activity.
- (2) **Payment.** Subsequent to the Use Time, UH will compile and submit to User an invoice for any extraordinary charges UH incurs in connection with the Authorized Activity. User shall remit to UH the full amount noted in the invoice within ten (10) days of User receiving such invoice.
7. **User Responsibilities.**
- a. **Comply with Applicable Laws and UH Policies.** In using the Use Area, User shall comply, and shall ensure that User’s officers, employees, vendors, sellers, contractors, consultants, agents, representatives, and any person acting on behalf of User, including all members of 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”) comply with all applicable laws, statutes, ordinances, rules, regulations, orders, and directives of any federal, state, or county governments (collectively “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”).
- b. **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”).
- c. **User Responsibility for Cleanup.** User shall be responsible, at its sole cost and expense, for 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 the Authorized Activity. 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. The Use Times shall include time necessary to complete such cleanup and restoration of the Use Area.

- d. **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 the User Agents and/or the Attendees.
8. **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.
9. **Insurance.** User shall, and shall ensure that the User Agents shall, during the entire term of this Agreement, at no cost to UH, maintain the applicable insurance described on **Exhibit B** hereto and incorporated herein by reference, issued by an insurance company or companies authorized to do business in the State of Hawai'i and reasonably satisfactory to UH, and containing the applicable provisions described on **Exhibit B**.
10. **Indemnify and Defend UH.** As a condition to 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 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 User's or any of the User Agents' performance (or non-performance) of any rights, privileges, responsibilities or obligations under this Agreement.
11. **Promotional Materials; No License to Use UH Marks.** 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.). 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.
12. **User's Non-Compliance.** If UH discovers, learns, or becomes aware that any representation or information provided by User herein or in connection with this Agreement and/or User's conduct of the Authorized Activity within the Use Area during the Use Times, is not true and correct, or User fails to timely perform or comply with any of User's obligations under this Agreement, including, without limitation, failing to (i) timely pay the Rental Fee, any extraordinary charges or any other required payments hereunder, (ii) obtain and/or maintain the required insurance, (iii) obtain any necessary approvals, (iv) comply with Applicable Laws or UH Policies, (v) coordinate with and/or comply with the Event Coordinator's directions or instructions, (vi) clean up, repair and restore the Use Area and the Facility, UH may terminate this Agreement at any time, upon twenty-four (24) hours prior written notice from UH to User and opportunity to cure. Based on such termination, User shall be responsible for any and all costs that UH incurs in connection with User's failure to perform or comply with any of User's obligations in this Agreement. In addition, User may 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 such time as UH or the UH Campus deems warranted or justified in light of User's failures to perform or comply with its obligations under this Agreement.

13. **Force Majeure.**

- a. **Obligations.** During the duration of the Force Majeure Events (as defined below), 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.

14. **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, sent to the address noted below (or such other address as a party may designate in writing to the other party), 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: _____	Address: _____
_____	_____
Attn: _____	Attn: _____
_____	_____
Phone: _____	Phone: _____
Cell: _____	Cell: _____
Fax: _____	Fax: _____
Email: _____	Email: _____

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.

15. **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 _____,
(Insert Name of UH Affiliated User) (Insert type of legal entity and state of formation)

and 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.

16. **Assignment.** UH may assign or otherwise transfer any interest in this Agreement without User's consent. 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. User may not assign or otherwise transfer any interest, right, liability, or obligation in this Agreement without UH's prior written consent.

- 17. **Amendment.** This Agreement shall not be amended except in writing signed by the parties.
- 18. **Governing Law; Jurisdiction.** This Agreement shall be governed by, interpreted, construed, and enforced in accordance 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.
- 19. **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.
- 20. **User's surviving obligations.** Notwithstanding any termination of this Agreement, 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, (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.
- 21. **Special 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 C** 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:

UH:

UNIVERSITY OF HAWAI'I

By: _____

Name of User Signatory

Title of User Signatory

Name of User Department/ Division/ Section

Date: _____

By: _____

Name of University Signatory

Title of University Signatory

Name of School or College

Name of Campus

Date: _____

EXHIBIT A

User's Application to use Use Area During Use Times

[insert below USE APPLICATION/RESERVATION]

EXHIBIT B**Insurance Requirements**

All terms defined in the Agreement to which this Exhibit B is attached shall be applicable to the insurance requirements contained in this Exhibit B.

a. **Required Insurance Coverage:** [check the boxes below of all 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, 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

- (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.

- (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.

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.

EXHIBIT C**Special Terms and Conditions**

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

[Mark any of the following provisions that apply:]

- 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.
- 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. Such insurance coverage shall be subject to the insurance policy requirements set forth in Exhibit B of the Agreement.

- **Hazardous Materials.** User shall not, and shall ensure and require that the User Agents do not, cause or permit: (i) the escape, disposal, or release of any Hazardous Materials (as defined herein) except as permitted by law, (ii) 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 (iii) 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, the User shall, at the 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.
- **Pollution Liability Insurance.** UH may require that User and the User Agents obtain and maintain 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 User or the User Agents, the conduct of the Authorized Activity, or any activities of User or the User Agents relating thereto, with a combined single limit coverage of not less than \$2,000,000.00 per occurrence, 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 pollution liability coverage. Such insurance coverage shall be subject to the insurance policy requirements set forth in Exhibit B of the Agreement