

Massachusetts College of Art and Design

Facility Use Agreement

Reservation # EMS #

This Facility Use Agreement (the "**Agreement**") is entered into this **date this contract is being generated** by and between Massachusetts College of Art and Design, a public institution of higher education, having an address of 621 Huntington Avenue, Boston, Massachusetts 02115 (the "**College**") and **Sponsoring Organization**, with an address of **Mailing Address of Sponsoring Organization** ("**User**").

1. **License to Use Facilities:** The College grants to the User a revocable, nonexclusive license to use and occupy the Facilities (as defined below) owned by the College and located on Massachusetts College of Art and Design's campus at 621 Huntington Avenue in the City of Boston for the Event during the Facilities Term (as defined below) in accordance with the terms and conditions of this Agreement. This Agreement is not a lease, and no interest in real estate is conveyed hereby. The following terms shall have the means set forth below for the purpose of this Agreement:

"Event" **Enter Type of Event per EMS (Enter Event Name Here.)**

"Facilities" **Enter Facilities being utilized for the Event**

"Facilities Term" **Enter inclusive dates and times of the Event including set up and take down activity**

"User Parties" means User and its officers, employees, agents, representatives, contractors, invitees and attendees and any other person acting for or by permission of the User, and "**User Party**" means any one of them.

2. **Additional Responsibilities of the College:** The College agrees to provide the following, as indicated below:

AUDIO/VISUAL: All in-stock audio-visual items are provided by the College at no additional charge and will be arranged for as needed, if not otherwise permanently located in the rooms.

FOOD SERVICE: **Enter the type of Meal (breakfast, lunch, dinner, breaks, contract dining etc.).**

Any additional request for food service must be received five (5) business days in advance of the event.

3. **Notification Responsibilities of the User:**

AGREEMENT: User is responsible for returning two original signed copies of this Agreement, along with any deposit required and proof of required insurance, no later than **this should be a minimum of three (3) weeks from the event date (or first occurrence for a multi-day contract)**, or the reservation will be null and void.

AUDIO/VISUAL: Additional Audio/Visual needs outside of in-stock equipment is the responsibility of the User. User must notify College of all Audio/Visual needs fourteen (14) business days in advance of the Facilities Term.

- ACCOMMODATION REQUESTS:** User must notify College of any requests for ADA accommodations twenty-eight (28) business days in advance of the Facilities Term. The cost of services or equipment related to such accommodations is the responsibility of the User.
- FOOD SERVICE:** User must notify College of final food service count five (5) business days in advance of the beginning of the Facilities Term. If the User fails to notify the college, the User will be billed for food services listed in Section 4, Fees and Payment Schedule of this Agreement.
- NON-PROFIT CERTIFICATION:** Where applicable, User must furnish IRS 501(c)(3) tax-exempt certificate on or before **Enter same date as contract due date.**
- PARKING:** User is responsible for communicating parking instructions to all User Parties in accordance with arrangements outlined by the College.

4. **Fees and Payment Schedule:**

FACILITY USER FEE: **Enter total cost for Facilities being utilized and listed in Section 1.**

FOOD SERVICE FEES: All items are billed on per person pricing and will be based on a meal count of **Enter minimum guarantee.**

Enter itemized list of items including costs (but not specific number of items)

Massachusetts State Tax: 6.25%

Additional services requested will be billed accordingly and must be made in writing.

LABOR: **MAINTAINER:** \$60 per hour, 4 hour minimum

ELECTRICAL/HVAC OR TRADES DETAIL: \$70 per hour, 4 hour minimum

POLICE DETAIL: \$60 per hour, 4 hour minimum

A/V TECHNICIAN: \$15-\$40 per hour

GALLERY ATTENDANT: \$20 per hour, 4 hour minimum

PAYMENTS: User will be billed the month following the Event and payment shall be due thirty (30) days following the date of the invoice. Any split billing information should be submitted no later than **Enter same date as contract is due.**

DEPOSITS: A non-refundable deposit of **Enter dollar amount equal to 25% of the total anticipated contract value** (25% of the total anticipated contract value) is due on or before **Enter same date as contract due date.**

A Payment of **Enter dollar amount equal to 50% of the total anticipated contract value** (50% of the total anticipated contract value) is due on or before **Enter date one week prior to event.**

Upon completion of Event, any retained deposit will be applied against the remaining unpaid bill balance.

CANCELLATION BY USER:

This Agreement may be terminated without cause by the User by giving written notice to the College according to the following guidelines:

- a. All cancellations initiated by the User must be made in writing, by the User to the Conference and Event Services Office.
- b. If cancellation is received more than 60 days prior to the start date of Facilities Term, the User will not be assessed charges.
- c. If cancellation is received 30-59 days prior to the start date of the Facilities Term, User will be assessed a cancellation fee equivalent to 25% of the total value of the Agreement.
- d. If cancellation is received 24 hours to 30 days prior to the start date of the Facilities Term, User will be assessed a cancellation fee equivalent to 50% of the total value of the Agreement.
- e. If cancellation is received less than 24 hours prior to the start of the Facilities Term, User will be assessed a cancellation fee equivalent to 100% of any overtime detail charges and 50% of the remaining value of the Agreement.
- f. There is no cancellation by User after the start of the Facilities Term.

TERMINATION BY THE COLLEGE:

If the User or any User Party fails to fulfill any of its obligations hereunder, including, but not limited to, any violation of any law, regulation, ordinance, College policy or rule, or this Agreement, the College may revoke the license to use the Facilities and/or terminate this Agreement upon notice to the User. The notice will state the circumstances of the alleged breach and may, but is not required to, state a reasonable time period during which the alleged breach may be cured subject to the approval of the College. The User is obligated to make full payment of all fees under this Agreement in the event of such revocation or termination by the College pursuant to this Section. The College also retains the right to cause the ejection of any person at any time, upon any breach of this Agreement by User or any User Party or if it is in the interest of public order or safety.

SURRENDER OF THE FACILITIES:

Upon the earliest to occur of (a) completion of the Event, (b) expiration of the Facilities Term, or (c) termination of this Agreement, User shall promptly vacate and surrender the Facilities in the same condition as when possession was received by User and shall remove all items of personal property of all User Parties. In the event that property of any User Party is not removed by the User at such time, the College may remove from the Facilities and/or dispose of any and all of such property, at the expense of the User, and the College shall not be liable for any damages or loss sustained by reason of such removal or disposal.

5. **Term of Agreement:** The term of this Agreement shall be the period commencing on **Enter date this contract is generated**, and ending on **Enter date 90 days after the Event concludes.**
6. **This Agreement is made subject to the following further terms and conditions:**

PROTECTION OF MINORS:

For the purposes of this Agreement, a "minor" is any person under the age of 18. This section is applicable if the any minor(s) will attend the Event or enter onto any College premises (including, but not limited to, the Facilities) or any minor(s) is a User Party. The User represents, warrants, and agrees as follows: (a) User has conducted criminal background and sexual offender registry checks on all employees, contractors, representatives, and volunteers and other User Parties who will work or interact with minors on any College owned or leased property, at a minimum in conformance with M.G.L. c. 6, §§172G and 172H and M.G.L. c. 71, §38, to the extent applicable with no adverse findings that would disqualify them from working with children, including any criminal finding involving sex crimes; (b) all minors attending the Event or otherwise on College owned or leased property because of User shall be in the care, custody and control of the User at all times; (c) all minors will be subject to all College policies, rules, and procedures while on any College owned or leased property or participating in any College program or activity and any minor may be asked to leave the program, activity or property if the minor fails to comply with any such policy, rule, or procedure; and, if minors will stay overnight or the Event is for more than one day, (d) (i) User shall provide the College with signed documents in a form acceptable to the College from the minors' parents and/or guardians releasing the College Indemnified Parties (as defined below) from liability and (ii) the User has appropriate authorization for emergency medical care for all minors attending the Event; (e) to age and program appropriate levels including access to, communication with, supervision User adheres of, and standards for physical contact, with children; and (f) User is in possession of appropriate forms and can readily access appropriate forms including permission forms and medical contact information. The College strongly encourages User to provide appropriate training to all User employees and volunteers on recognizing abuse in children and best practices in keeping children safe.

CONFIDENTIALITY:

The User shall keep confidential all personal and other confidential data and information that is provided to User by the College or that otherwise comes into their possession in the performance of their obligations under this Agreement, and the User shall not disclose the same to other persons or entities without the prior written authorization of the College.

SERVICES, EQUIPMENT AND COSTS:

The College shall provide the services and equipment outlined in the Agreement and the User shall pay to the College the fees specified in this Agreement with the understanding that all fees identified in the addendum and elsewhere in this Agreement are based on specific service requests and the wages currently paid under College collective bargaining agreements. Should these requests be modified in any way, or wages increase due to contract terms, the College reserves the right to retract the fees included herein and renegotiate same with the User. In the event that mutually acceptable fees cannot be renegotiated prior to the time the Event is scheduled to begin, the College may, at its sole discretion, cancel the Agreement.

FORCE MAJEURE:

Neither party shall be liable to the other or be deemed to be in breach of this Agreement for any failure or delay in rendering performance arising out of causes beyond its reasonable control and without fault or negligence. Such causes may include, but are not limited to, acts of God or of a public enemy, fires, flood, epidemics, quarantine restrictions, strikes, freight embargoes, or unusually severe weather. Dates or times of performance shall be extended to the extent of delays excused by this

section, provided that the party whose performance is affected notifies the other promptly of the existence and nature of such delay, and provided that nothing in this provision shall be deemed to extend the Facilities Term. The College generally announces all weather-related campus closings on the College's website homepage. User is responsible for communicating all cancellations under this Section to User Parties.

SEVERABILITY: If any provision of this Agreement is declared or found illegal, unenforceable, or void, then both parties shall be relieved of all obligations under the provision. The remainder of the Agreement shall be enforced to the fullest extent permitted by law.

WAIVERS: All conditions, covenants, duties and obligations contained in this Agreement can be waived or amended only by written agreement between both parties. Forbearance or indulgence in any form or manner by a party shall not be construed as a waiver, nor in any way limit the legal or equitable remedies available to that party.

INDEMNIFICATION: To the fullest extent permitted by law, User shall indemnify and hold harmless the Commonwealth of Massachusetts, the Board of Higher Education, the College, their trustees, officers, agents, employees, attorneys, successors, assigns and representatives (collectively, the "**College Indemnified Parties**") from and against any and all claims, demands, suits, actions, judgments, settlements, costs, losses, theft, damages, fines, penalties, liability, expenses and third party action(s), including reasonable attorneys' fees and costs through litigation and all appeals, of every kind and nature incurred, sustained, or suffered by or asserted against, any College Indemnified Party (collectively, "**Damages**") relating to or arising out of, in whole or in part, (i) the Event; (ii) any occurrence in, upon, at or about any of the property owned or controlled by the College resulting from the User Parties' entering into, occupancy or use of such property whether authorized or not; (iii) any negligent act or omission or willful misconduct of any User Party; or (iv) the breach of this Agreement by User. Nothing contained herein shall be construed to make the College liable for any injury or loss caused by the negligence of the User or any other User Party. The indemnification obligation under this Section shall not be limited by the existence of any insurance policy or by any limitation on the amount or type of damages, compensation, or benefits payable by or for any User Party, and shall survive the termination of this Agreement.

LIABILITY INSURANCE: User agrees, at its own expense, to purchase and maintain throughout the term of this Agreement (a) a comprehensive commercial general liability insurance policy in the minimum amounts of \$1,000,000.00 per occurrence, \$2,000,000.00 general aggregate; (b) workers' compensation and employers' liability insurance as required by law; and (c) in the event that User Parties will include minors, sexual molestation and abuse coverage in the minimum amount of \$1,000,000.00 per occurrence. The insurance coverage limits shall not limit User's liability under this Agreement. Said insurance policy shall be written by a company authorized to do business in the Commonwealth of Massachusetts and reasonably acceptable to the College. The Insurance shall cover the events under this Agreement; and the commercial general liability insurance certificate shall name Massachusetts College of Art and Design as the certificate holder. The User shall provide the College with a certificate of insurance evidencing compliance with the terms of this section at the time this Agreement is executed. User shall be solely responsible for payment of any self-insured retention or deductible associated with such insurance in the event of a paid claim.

A Certificate of Insurance, evidencing such coverage, will be provided to the Conference and Event Services Office. Failure to provide said Certificate could result in cancellation of scheduled event by the College. The College must be notified of cancellation of such insurance not less than seven (7) days prior to the scheduled event.

LIABILITY:

User agrees that it shall use and occupy the Facilities and other College property at its own risk, and the College shall not be liable to any User Party for any personal injury or loss or damage to vehicles, equipment, fixtures, or other personal property brought onto the College premises except as caused directly by the gross negligence of the College. Without limiting the foregoing, College shall not be liable to User for any injury, loss or damage to persons or property caused by any acts or omissions of the User Parties or members of the general public. No trustee, officer, employee or agent of the College shall be personally liable to any User Party for or on account of any alleged breach of this Agreement, or for any act, failure to act or other matter arising out of the execution of this Agreement or the performance of the College's obligations hereunder.

CONTROL OF FACILITIES:

The Facilities shall at all times be under the control of the College, and duly authorized representatives of the College shall have the right to enter the Facilities at all times during the period covered by this Agreement. At no time shall User permit the number of individuals in the Facilities to exceed the maximum occupancy thereof.

COMPLIANCE WITH LAWS AND POLICIES:

User agrees to comply, and shall cause the User Parties to comply, with all College policies, rules, guidelines, and all local, state and federal laws, including, but not limited to, those concerning health, safety and public order. User shall further agree to take responsibility for the implementation and enforcement of these items and to cause the User Parties to comply with all reasonable requests of the College, its personnel and security agents, relating to the premises and operations thereof. A copy of College policies, rules and guidelines is available upon request from the office of College and Visiting Events. User shall conduct all activities in a safe manner, and shall not permit any activities by persons in any manner that could bring discredit to the College. In no event shall any alcoholic beverages be served on College property without (a) the prior written approval of the College and (b) providing to the College all licenses, certificates and insurance requested by the College prior to the Event. User agrees that it shall not, and shall not permit, any act to be done or condition to exist in the Facilities or any part thereof or any article to be brought thereon, including, without limitation, fireworks, pyrotechnics or other incendiary displays or devices, which may be dangerous, or which may make void or voidable any insurance then in force or required under this Agreement. User shall not cause or permit the existence or continuation of any nuisance, including excessive noise, while on or about the Facilities or other College property.

USER REPRESENTATIONS AND WARRANTIES:

User represents, warrants, and agrees that (a) College is providing the Facilities on an "as is," "where is" basis in their present condition and state of repair with all faults, known or unknown, and that the User Parties are using the Facilities without reliance on any representations or warranties from the College or any other party; (b) neither the College nor any other party on the College's behalf has made any representations or warranties with respect to the Facilities or grounds adjacent thereto, except as expressly set forth in this Agreement; (c) User has the capacity and is duly authorized to enter into, execute, deliver and perform this Agreement and the person executing this

Agreement on behalf of the User has the authority to legally bind the User; (e) upon execution of this Agreement by User and the College, this Agreement is legally binding upon User; (f) User has inspected the Facilities and accepts them in their present condition and shall not alter or change the Facilities without written prior approval of the College; and (g) User shall notify the College promptly of any conditions that User deems to present a danger or hazard.

SUBSTITUTION OF FACILITIES: The College reserves the right to substitute comparable facilities for those reserved by the User in its sole discretion.

USE OF NAME; ADVERTISING/SIGNS: User shall not imply in any way that the College is sponsoring the Event; and no reference to College or any affiliate of College may be used in promotional or other literature used or distributed by User, other than references to the location of the Event, without the explicit written permission of the College. User shall not involve or refer to any College staff or College telephone numbers, email, or web addresses in any publicity, enrollment information, or on any printed Event brochure, without the permission of the College. User shall provide the Director of College and Visiting Events with an advance copy of User's proposed advertising for approval, to ensure that the involvement of the College in connection with the Event is properly represented. It is further agreed that signs will not be posted or distributed in or about said Facilities without the consent of the College, and then only on spaces clearly indicated to User. User shall not be permitted to (a) capture (in any manner or media including, but not limited to photography or video) any recording of or (b) use in any manner the name of the College or any logo, trademark, service mark or other intellectual property of the College without the prior written approval of the College. User shall not communicate or transmit, nor record for transmission, any events or images of artwork, people, or students presented at the Facilities without the prior written approval of the College.

LICENSES: User shall be responsible for procuring any licenses or special permits required by federal, state, or local agencies in association with the Event.

TAXES: User shall be responsible for the payment of any federal, state or local taxes in association with the Event.

CONCESSIONS/SALE OF SOUVENIRS: The User agrees that all concession rights and privileges, including the sale of souvenirs and other printed materials, shall be retained by the College unless these rights are waived in writing by the college. Unless directly benefitting the College and its departments, no sale of any items may transpire on College property.

DEPOSITS: Deposits and payments made in accordance with the fee schedule accompanying this Agreement are non-refundable except when the College is unable to deliver possession of the Facilities (or similar alternate facilities) through no fault of the User.

EQUIPMENT: Any equipment or effects of the User remaining on the Facilities for more than 24 hours after the expiration of this Agreement without prior written permission of the College shall be deemed abandoned and disposed of by the College at its sole discretion.

SMOKING: Smoking is prohibited at all times in College buildings. Smoking is permitted only in designated areas on college property. User assumes responsibility for informing all User Parties of this restriction and ensuring that it is enforced.

