

**Use of Facilities Agreement
Incorporating a
Release, Waiver of Liability, and Indemnity Agreement**

This Use of Facilities Agreement ("Agreement") is made and entered into this ____ day of [INSERT MONTH], 202_ by and between The Young Men's Christian Association of Central Ohio, an Ohio nonprofit corporation ("YMCA") and [INSERT USER] ("User").

WHEREAS, YMCA currently owns fee simple title or a leasehold interest in certain property located at [INSERT ADDRESS OF FACILITY] (the "Property");

WHEREAS, YMCA desires to permit User to use [INSERT AREA] within the Property (the "Space") solely for the purpose of [INSERT PURPOSE] (the "Permitted Use");

WHEREAS, YMCA desires to grant a license to User for User's use of the Space for the Permitted Use, pursuant to the terms and conditions set forth herein; and

WHEREAS, it is the desire of the parties to memorialize this understanding in a written agreement.

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Grant of License. Owner hereby grants YMCA and to YMCA's employees, agents, invitees, and licensees a non-exclusive and revocable license to enter upon and use the Space for the purpose of conducting the Permitted Use and to enter upon and use those portions of the Property that are necessary for access to the Space.

2. Term; Surrender.

a. Term. The term of this Agreement shall be for the period of [INSERT TERM LENGTH] (the "Term") commencing on [INSERT STARTING DATE] (the "Commencement Date"). Notwithstanding anything to the contrary contained in this Agreement, YMCA shall have the right to terminate this Agreement at any time by providing User with at least thirty (30) days prior written notice.

b. Surrender of the Space. Unless this Agreement has been mutually extended in writing by both parties prior to the expiration of the Term, User shall remove from the Space all personal property, equipment and trade fixtures owned by User and return and surrender the Space to YMCA in as good of a condition as it was in on the Commencement Date, reasonable wear and tear excepted.

3. Permitted Use. User shall use the Space solely for the Permitted Use. User agrees that its use of the Space shall be in accordance with any reasonable rules and regulations of YMCA in regard to security and the general use and operation of the Space and the Property

including, but not limited to, YMCA's code of conduct (the “Code of Conduct”), provided that YMCA has provided User with notice and a copy of such Code of Conduct.

4. Payments.

- a. As consideration for its use of the Space during the Term, User shall pay to YMCA a [MONTHLY/WEEKLY] payment of [INSERT PAYMENT AMOUNT] without demand, counterclaim, or offset (the “Fee”).
- b. The initial Fee payment shall be due and payable on the Commencement Date, and thereafter on the first day of each subsequent [MONTH/WEEK] through the expiration or earlier termination of this Agreement. The Fee payable for any partial [MONTH/WEEK] during the Term shall be prorated on the basis of the actual number of days in such [MONTH/WEEK].

5. Representations. User, for itself and all its employees, agents, representatives, and assignees, agrees and represents that it has or will inspect and carefully evaluate the Space. It is further warranted that use of the Space constitutes an acknowledgement that the Space and all facilities and equipment thereon have been inspected and carefully evaluated and that User finds and accepts same as being safe and reasonably suited for the Permitted Use.

6. Rules and Regulations.

- a. Law. Each User Party shall comply with all laws, recommendations, ordinances, rules and regulations of governmental, public, private and other authorities and agencies, with respect to the use or occupancy of the Space.
- b. Background Checks. User's employees and volunteers are required to clear a background check before having access to the Property.
- c. Training. User's employees and volunteers are required to have basic abuse prevention training before having access to the Property.
- d. Reporting. All violations of law or the Code of Conduct must be reported immediately to YMCA and each User Party must follow mandated reporting requirements for abuse. Each User party shall cooperate with YMCA in connection with YMCA's reporting process.

7. Assignment. User shall not assign or otherwise transfer its rights under this Agreement without prior written approval of YMCA.

8. Insurance.

- a. Policies. User shall maintain at its expense during the Term of this Agreement (i) comprehensive general liability insurance for personal injury, death or property damage arising out of the use of the Space by User and each User

Party and (ii) comprehensive automobile liability insurance, including coverage for "non-owned" automobiles, for property damage, bodily injury, including death resulting therefrom, with each policy having limits of not less than \$1,000,000.00 for any one occurrence. In addition to the foregoing, User shall maintain Worker's Compensation and Occupational Disease insurance in accordance with laws of the state of Ohio.

- b. Additional Insured. User's general liability and automobile liability policies shall name YMCA as additional insured and shall contain endorsements that the insurer(s) shall give YMCA and its designees at least thirty (30) days' advance written notice of any cancellation (except for at least ten (10) days' advance written notice of cancellation due to non-payment of premium), termination or lapse of insurance. User shall provide notice to YMCA immediately upon receipt of any notice received by User from its insurance carrier advising of non-renewal or cancelation of the policies required under this Agreement.
- c. Evidence. Upon the Commencement Date and upon YMCA's request thereafter, User shall provide YMCA with certificates evidencing such insurance is in full force and effect.

9. Default. YMCA shall have the right to terminate this Agreement upon notice to User upon the occurrence of any of the following:

- a. User fails to pay any installment of the Fee as and when due.
- b. A User Party fails to perform or observe any obligation or condition to be performed or observed by User or a User Party under the terms of this Agreement or the Code of Conduct and fails to correct such failure within five (5) days after YMCA gives User written notice of such failure. Notwithstanding the foregoing, YMCA shall have the right to immediately terminate this Agreement upon a breach of this Agreement or the Code of Conduct by a User Party related to the safety or well-being of YMCA or YMCA's employees, agents, contractors, licensees, or invitees.
- c. User ceases operations in the Space for more than five (5) days.

10. Acknowledgements. IN FURTHER CONSIDERATION OF BEING PERMITTED TO ENTER THE PROPERTY PURSUANT TO THIS AGREEMENT, INCLUDING BUT NOT LIMITED TO EVALUATION OR USE OF FACILITIES OR EQUIPMENT, USER HEREBY AGREES TO THE FOLLOWING:

- a. Release. USER HEREBY RELEASES, WAIVES, DISCHARGES AND COVENANTS NOT TO SUE YMCA, its directors, officers, employees, or agents (hereinafter referred to as "Releasees") from all liability to User, its employees, agents, personal representatives, licensees, invitees, assigns, heirs,

and next of kin (each, a "User Party") for any loss or damage, and any claim or demands therefor on account of injury to person or property or resulting in death, whether caused by the negligence of the Releasees or otherwise while a User Party is in, upon, or about the Property including use of any facilities or equipment therein.

- b. Indemnification. USER HEREBY AGREES TO INDEMNIFY, DEFEND, SAVE, AND HOLD HARMLESS the Releasees and each of them from any loss, liability, damage, or cost they may incur arising from a User Party's operations at the Property, including but not limited to use of YMCA's equipment or facilities, unless such harm is caused solely by the gross negligence or willful misconduct of the Releasees.
 - c. Risk. USER HEREBY ASSUMES FULL RESPONSIBILITY FOR AND RISK OF BODILY INJURY, DEATH, OR PROPERTY DAMAGE that may be incurred arising from a User Party's operations at the Property, including but not limited to use of YMCA's equipment or facilities, unless such harm is caused solely by the gross negligence or willful misconduct of the Releasees.
 - d. Scope. USER further expressly agrees that the forgoing RELEASE, WAIVER AND INDEMNITY AGREEMENT is intended to be as broad and inclusive as is permitted by the law of the State of Ohio and that if any portion thereof is held invalid, it is agreed that the balance shall, notwithstanding, continue in full legal force and effect.
11. Notices. Any notice, request or demand or other communication required or permitted hereunder shall be in writing and shall be sent by personal delivery, by nationally recognized overnight courier, or certified U.S. mail, postage prepaid, return receipt requested, to the other party at the address set forth for such party as follows:

If to User:

If to YMCA:

YMCA OF CENTRAL OHIO
1907 Leonard Avenue, Suite 150
Columbus, Ohio 43219

With a copy to:

[Catherine L. Strauss, Esq.
Ice Miller L.L.P.
250 West Street, Suite 700
Columbus, Ohio 43215]

Each party may from time-to-time change its notice address by providing written notice to the other party as provided herein.

12. Nonprofit Status of YMCA. Should anything in this Agreement adversely affect YMCA's not-for-profit status, this Agreement may be voided at YMCA's sole option.

13. Arbitration. User and YMCA agree that any controversy, dispute, or claim ("Claim") by either User or YMCA against the other, or against the employees, agents, or assigns of the other, whether based on contract, tort, or any other legal basis or theory, that arises from or relates to (a) this Agreement, (b) services rendered by us pursuant to this Agreement, (c) the relationships that result from this Agreement, or (d) the validity, scope, enforceability, or applicability for this arbitration provision to a Claim shall be resolved by binding arbitration. User and YMCA may choose either the American Arbitration Association or a local Ohio forum to conduct any arbitration proceeding. If either is unwilling or unable to conduct the arbitration proceeding, or if User or YMCA is unable to agree on another arbitrator, they will substitute another national or regional arbitration organization.

14. Miscellaneous.

- a. No Presumption Against Drafting Party. The parties acknowledge that each party and, if it so chooses, its counsel, have reviewed and revised this Agreement and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement or any amendments or exhibits hereto.
- b. Applicable Law. This Agreement shall be construed under the laws of the State where the Property is located.
- c. Attorney's Fees. If suit or action is brought to enforce this Agreement or any provision hereof, or to rescind or disaffirm this Agreement or any provision hereof, the prevailing party shall be entitled to recover reasonable attorney's fees and expenses, both trial and appellate, in addition to its costs and disbursements allowed by law, which shall include the costs of any discovery proceedings.
- d. Binding Effect. This Agreement shall be binding upon, and shall inure to the benefit of the parties and their respective successors and assigns.
- e. Amendments. No alterations to or modifications of the terms or the provisions of this Agreement shall be effective unless such alteration or such

modification is reduced in writing and is then properly executed by the parties hereto.

- f. Relationship of the Parties. Nothing contained herein shall be deemed or construed by the parties hereto or by any third party to create the relationship of principal and agent or partnership or joint venture or any association between YMCA and User, and no provision contained herein or any action of the parties hereto shall be deemed to create any relationship other than that of independent contractor.
- g. Severability. If any provision of this Agreement is adjudged to be void or unenforceable, same shall not affect the validity of this Agreement or of any other provision hereof.
- h. Counterparts. This Agreement may be executed in one or more counterparts, and by facsimile and electronic mail, each of which shall be an original and all of which together shall be one and the same instrument.

USER HAS READ AND VOLUNTARILY SIGNS THIS AGREEMENT AND THE INCORPORATED RELEASE AND WAIVER OF LIABILITY AND INDEMNITY AGREEMENT, and further agrees that no oral representations, statements, or inducement inconsistent with the foregoing written agreement have been made.

IN WITNESS WHEREOF, the parties have duly executed this Agreement on the day and date forth above.

User:

[INSERT ENTITY]

By: _____
Name: _____
Title: _____

YMCA:

THE YOUNG MEN'S CHRISTIAN
ASSOCIATION OF CENTRAL OHIO, an
Ohio nonprofit corporation

By: _____
Name: _____
Title: _____