

FIU-Stadium-Contract No. \_\_\_\_\_

## **FIU STADIUM USE AGREEMENT**

THIS AGREEMENT is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, by and between The Florida International University Board of Trustees on behalf of its Athletics Department (“FIU”) and \_\_\_\_\_ (“User”) authorized to do business in the State of Florida, with offices at \_\_\_\_\_

WHEREAS, FIU controls and operates the FIU Stadium (“the Premises”); and

WHEREAS, FIU is willing to permit User to use the Premises under the terms and conditions of this Agreement,

NOW, THEREFORE, the parties agree as follows:

### **A. Use of Premises, Use Period, Condition and Care of Premises.**

- i. User may use the Premises for the purpose of holding \_\_\_\_\_ and all ancillary activities associated with this game (“Event”) on the Premises on \_\_\_\_\_ (“Use Period”) and for no other purpose.
- ii. User acknowledges that it has inspected the Premises and that it is satisfied that the Premises have the capacity and capability to accommodate the activities contemplated under this Agreement.
- iii. The User, its employees, agents and invitees are responsible for the proper use and care of the Premises. User agrees to pay for the cost of any damage or repairs that may be necessitated as a result of the use of the Premises by User, reasonable wear and tear customary for such Events excepted.
- iv. User agrees to remove all of User’s property or other effects immediately after the completion Event. Any property that is left in, on, or around the Premises by User after a period of 7 days following the Use Period shall be deemed abandoned and become the property of FIU to be used or disposed of at the discretion of FIU.
- v. FIU shall have the right to manage, control, and enter upon the Premises at any time during the Use Period, as it deems reasonably necessary to enforce all rules and regulations and/or applicable law.

**B. User Fees.** In consideration for the Use of the Premises and the services conferred on User herein, User shall pay to FIU the following fees outlined herein (“Use Fees”).

- i. User agrees to pay a base rental fee of \_\_\_\_\_ (“Base Rental Fee”) for the use of the Premises. The Base Rental Fee is inclusive of the following:
  - a) Use of FIU Stadium for the Event in accordance with conditions set forth in the Agreement.
  - b) Use of both visitors’ onsite locker rooms during the rental period.
- ii. User agrees to pay at its sole expense for all Additional Charges more fully referenced below. Additional Charges include but are not limited to:
  - a) Event Personnel: FIU shall furnish, at User’s sole cost and expense, the Event Personnel (“Event Personnel”), including ticket takers, ushering staff, security, emergency services (“EMS”), box office personnel, installation personnel, and the like. Event Personnel also includes FIU personnel which shall be provided at User’s sole cost and expense if in the estimation of the Athletics Director or his designee (initially designated as \_\_\_\_\_) such personnel is required (the “FIU Event Staff”). FIU Event Staff includes, but is not limited to, event supervisors, cleaning / janitorial staff, office attendants, grounds men, laborers, technicians, control room production staff, and all other personnel reasonably necessary for the proper conduct of the Event.
  - b) Security: User acknowledges that although FIU’s Public Safety Department provides normal routine patrol of all areas of the University, FIU cannot guarantee security to the Premises. The User shall be solely responsible for the security of its equipment and that of its personnel and invitees on FIU property. FIU shall furnish, at User’s sole cost and expense, police and/or security and /or parking officers as deemed necessary by Athletics Director or his designee for traffic, parking, crowd control and general safety. If, during the course of the Event, FIU reasonably determines that security for the Event is insufficient for proper crowd control, then FIU may summon such additional officers as are deemed reasonably necessary. User shall be responsible for payment of such additional security at the same rate as User has agreed to pay for other security personnel for the Event. In the event that off-duty police officers are summoned, then the compensation shall be based on the greater of four (4) hours or the actual time devoted to the Event.
  - c) Field / Court Markings: FIU agrees to provide proper field / court markings designated by User’s requirements at User’s expense. Such requirements shall be furnished to FIU in writing and must be agreed upon by FIU no less than one month prior to Event date. If additional markings are necessary to return the field / court to its previous state, i.e. football markings, User agrees to assume all such additional costs.

- d) Utilities: FIU shall furnish and User shall pay as an Additional Charge, electric, utility power, lighting, water, and drainage services as presently installed for the Premises during the Use Period covering this Agreement. User expressly waives any and all claims for compensation for any and all losses or damages sustained by reason of any defect, deficiency, failure or interruption of the above or any other utility service.
- e) Equipment: User must submit a list of all equipment requested from FIU on a rental basis, in writing no later than one month prior to the Event date. Such equipment will be made available only with the express written consent of FIU prior to set-up and use on the Premises. User assumes the sole cost and expense for rental, set-up and removal of all equipment provided by FIU. Any other equipment User intends to utilize for the Event must also be approved in writing by FIU prior to setup.
- f) Premises Damages: User agrees to be fully responsible for any damages to the Premises caused by the User and/or its officers, agents, representatives, employees, invitees or persons contracting with User. The inspection of the facility will be conducted within two business days upon completion of the Event.

**C. Ticketing Services.** FIU will be responsible for collection of all gross ticket sales for the Event (including on-line and walkup sales), and shall use the JumpTV ticketing system for the collection and tracking of all ticket sales. FIU shall remit net revenues to User following the final settlement of accounts in accordance with Section D below. The following shall apply to all ticket sales:

- i. A \$1.25 ticket surcharge (“FIU Ticket Fee”) shall be applied to all distributed tickets. The FIU Ticket Fee shall be retained by FIU.
- ii. All tickets shall be listed on a ticket manifest by FIU. The ticket manifest shall specifically state the number of tickets printed and the corresponding serial number.
- iii. No complimentary tickets will be issued except as otherwise authorized in writing by FIU.
- iv. User has the option to sign out up to 500 tickets to sell at one time. If User agrees to exercise said option then User must make a deposit worth 50% of the aggregate face value of the tickets. User must return the full face value of all tickets sold or each unsold ticket. User expressly agrees that it is solely responsible for the full face value of all the signed out tickets in the event they are lost, misplaced, or stolen.

**D. Payment Terms and Conditions.**

- i. User agrees to make payments in the following manner:

- a) User will pay 25% of the Base Rental Fee \$\_\_\_\_\_ as a non-refundable deposit, upon execution of this Agreement.
  - b) User further agrees to pay the remaining 75% of Base Rental Fee \$ fifteen business days (\_\_\_\_\_) prior to Event date.
  - c) In the event that by \_\_\_\_\_, advanced ticket sales reported by FIU represent less than 50% of FIU's projected operating expenses (as determined by FIU), USER shall pay an additional deposit ten (10) business days prior to the Event (\_\_\_\_\_) so as to maintain on deposit an amount equal to 50% of the anticipated operating expenses related to the Event.
  - d) All payments to FIU shall be made via cashier's check or money order.
  - e) FIU shall retain revenues from the Event sufficient to cover all Use Fees due to FIU pursuant to Section B above. In the event that revenues collected from the Event are insufficient to cover all Use Fees due and owing to FIU, User agrees to pay all such outstanding Use Fees to FIU no later than twenty (20) business days following the date of the Event (\_\_\_\_\_). If outstanding Use fees are not paid timely by \_\_\_\_\_, User agrees to pay interest at the rate of 10%, which interest shall accrue until all outstanding balances are paid in full.
- ii. Following the settlement of all Use Fees and the FIU Ticket Fee due to FIU under this Agreement, FIU shall remit to User any remaining revenues collected by FIU, if any, pursuant to the following procedures:
- a) Within five business days following execution of the Agreement, User shall submit a valid Vendor Set-Up and FIU W-9 ("Forms") provided by FIU.
  - b) User shall submit an invoice to FIU in an amount equal to the Event-related revenue reported by FIU through use of the JumpTV ticketing system, less any and all Use Fees and the FIU Ticket Fee due to FIU under this Agreement.
  - c) FIU shall mail payment to User ten business days after:
    1. The Premises have been inspected and FIU has been made whole in the event of any damage; and
    2. User submits a valid invoice signed and stamped by FIU.

**E. FIU Stadium Suites.** FIU retains the sole and exclusive right to use three (3) Suites at the Event. Such Suites are designated as Numbers 205, 211, and 213. User shall have the right to use and/or sell thirteen (13) Suites for the Event. User must permit FIU Football Suite holders a right of first right to purchase said Suites on the same terms as User shall make available to the general public.

- F. Food and Beverage Concessions.** User understands and agrees that this Agreement shall not grant to the User any food, tobacco, and beverage concession rights, which belong solely to FIU. Accordingly, the sale of all food or beverages except by FIU and/or FIU's concessionaire(s) is strictly prohibited.
- G. Novelties and Merchandise.** User shall have the right to sell, or give away, all non-consumable merchandise of all types or descriptions, including but not limited to, licensed merchandise, souvenirs, novelties, premiums, magazines and programs at the Premises on each Event day, except for FIU trademarked items. All concessionaires engaged by User for this purpose shall be granted access to the Premises in order to deliver their supplies, to set up and to render their services. FIU shall provide sufficient space and reasonable time for such purposes. User shall have the right to set prices (if any) for such merchandise, and shall retain all revenues (if any) there from, except for FIU trademarked items. FIU retains the right to sell all FIU trademarked items at all Events.
- H. Parking.** FIU reserves the right to provide and control all parking at the Events. FIU may charge a parking fee to Event patrons. All parking revenues and all parking rights shall belong to FIU. User and all Event participants and invitees must abide by all FIU parking rules and regulations, including those prohibiting parking on the grass or in handicapped spaces without proper authorization, and the like.
- I. Admission.** A maximum attendance of (16,361) will be permitted for the Event. All entry to the Premises on the Event date shall be by ticket only, purchased at the full ticket price established by the User, except for employees of User and FIU whose presence is required for the presentation of the Event and who have received passes issued by User, and for the working media and working broadcast networks who have received passes issued by the User or as otherwise provided by this Agreement.
- J. Gate Opening Time.** Doors shall open as advertised \_\_\_\_\_. All tickets and promotions shall indicate opening time and Event start time \_\_\_\_\_. FIU reserves the right to change or adjust the door opening time as it deems reasonably necessary based on crowd control conditions.
- K. Risk of Loss:** User understands and agrees that except where caused by the negligence or misconduct of FIU, its agents or employees, FIU shall not be liable for any loss, injury or damage to any personal property or equipment brought into / onto the Premises by User or anyone whomsoever on User's behalf. All personal property placed or moved in the Premises shall be at the risk of User or the owner thereof. User further agrees that it shall be responsible to provide security whenever personal property either owned or used by the User, its employees, agents, concessionaires, or subcontractors is placed in/on the Premises, including any property or equipment necessary for set-up and dismantling, whether or not the Premises is open to the general public.
- L. Insurance.** USER shall provide FIU with proof of insurance sufficient to cover the operations and activities to be carried out on the Premises. Throughout the term of the Agreement, USER shall maintain, at its sole expense, the following minimum

insurance coverage: (i) commercial general liability insurance (occurrence form) with minimum limits of \$5,000,000 per occurrence (including damages to premises rented to you minimum limit of \$1,000,000 each occurrence), and (ii) workers compensation insurance as required by all applicable workers compensation laws, for its protection and the protection of the University. (iii) Appropriate medical insurance coverage for athletes or performers participating in the Event or shall cause the participants to carry such medical insurance. The general liability insurance certificate shall indicate that the policy carries an endorsement (no more restrictive than CG 20 10) which names the Florida International University, The State of Florida, The Florida International University Board of Trustees, The Florida Board of Governors, the FIU Athletics Finance Corp., and their respective trustees, directors, officers, agents and employees as additional insured's. The company's policy shall be primary and shall be issued in a form acceptable to FIU. Any insurance carried by FIU shall be noncontributing. The certificate shall contain a statement that the policy shall not be allowed to lapse or be canceled without notification of FIU at least thirty (30) days prior to the effective date of cancellation. USER shall furnish to FIU proof of coverage prior to use of FIU's Premises. The USER shall immediately notify FIU if the USER's Commercial General Liability insurance contains any restrictive endorsements other than those restrictive endorsements normally included on standard ISO Commercial General Liability occurrence forms. The absence of a demand for any type of insurance certificates or policy shall not be construed as a waiver of the USER's obligations to carry and maintain the appropriate insurances at limits that are appropriate to the liability exposure associated with this Agreement, and to ensure that its agents/subcontractors maintain appropriate insurance at all times. USER shall assume all risk and responsibility for the actions of its agents and/or subcontractors on the Premises. FIU does not represent that coverage and the limits specified herein will necessarily be adequate to cover USER liability.

**M. Indemnification.**

- i. User shall indemnify and save harmless the FIU Board of Trustees, Florida International University, the FIU Athletics Finance Corporation, the State of Florida, the Florida Board of Governors, and their respective trustees, directors, officers, instructors, agents or employees from and against all claims, suits, actions, damages, or causes of action arising during the terms of the Agreement for any personal injury, loss of life or damage to the property sustained by reason or as a result of the use of the Premises for the Event for which the Agreement is entered into and from and against any orders, judgments, or decrees which may be entered thereto, and from and against all costs, attorney's fees, expenses, and liabilities incurred in or by reason of the defense for any such claim, suit or action and the investigation thereof (collectively, the "Liabilities"), provided, that, the foregoing indemnity by User shall not cover or be applicable to any Liabilities directly and solely caused by any act or omission by FIU. User further indemnifies and holds FIU harmless from and against any and all claims, losses or expenses that may arise in connection with the cancellation of the Event due to rain.

Nothing in this Agreement shall be deemed to affect the rights, privileges, and

immunities of Florida International University, The Florida International University Board of Trustees and the State of Florida as are provided for by law. This provision shall survive the termination of this Agreement.

**N. Force Majeure.** Neither party shall be liable for any failure to perform its obligations or for any interruptions to the use of the Premises or failure to hold the Event(s) where such failure or interruption is caused by reason of fire, storm, explosion, strike, lockout, labor dispute, casualty, accident, lack or failure of sources of supply or labor, fuel supply, acts of God or of the public enemy, riots, interferences by civil or military authorities in compliance with the laws of the United States of America or the laws, orders, rules and regulations of any governmental authority, or by reason of any other cause beyond such party's control.

**O. Special Regulations:** User agrees to use all commercially reasonable efforts to comply with each of the following Special Regulations:

- i. Beverages: There shall be no bottles or cans of any sort brought into the Premises during the presentation of the Event. User agrees to advise the invitees of this provision by including this restriction in all promotions for the Event.
- ii. Restriction for Playing Field: User agrees to restrict all vehicles from the grass and playing field. Any exception to this restriction may only be granted by the Athletics director or his designee in writing.
- iii. Access: User agrees to keep all portions of sidewalks, doors, passages, halls, stairways, and any and all ways of access to the Premises free and unobstructed by User and shall not be used except for ingress or egress to the Premises by User.
- iv. Display Advertising: The amount and contents of display advertising at the Premises shall be at the discretion of the FIU Athletics Director or his designee. No decorations shall be placed in or on the Premises, nor shall any devices or signs be supported by any means without prior written consent of Athletics Director. Any exhibit material, sets, scenery, and the like must be flame proofed material and conform to the Miami-Dade County fire code.
- v. Recognition Rights: During the term of this Agreement. User shall identify the Premises, as “**FIU Stadium**” in all promotional material and press releases prepared or issued in connection with the Event, or as FIU may otherwise designate in writing in the event that FIU secures naming rights for the FIU Stadium.

**P. Miscellaneous Provisions.**

- i. No Joint Venture. It is expressly understood that by making the Premises available, the FIU Board of Trustees, Florida International University, State of Florida, and the Florida Board of Governors are not entering into any type of joint venture agreement with the User, nor are they acting as an agent of or for the User.

- ii. Minor Children. User agrees that in the event it has any minor children under its supervision while on the Premises, it will ensure that criminal background checks have been conducted for all personnel who will be interacting or may interact with the minor children. User further agrees that it will not allow anyone convicted of a sexual offense to be employed or volunteer in any capacity. User hereby indemnifies and holds FIU harmless from and against any and all claims, losses or expenses that may arise in connection with the provisions contained herein.
- iii. Compliance with All Laws. User acknowledges sole responsibility for the payment of all applicable federal, state and local taxes, fees, of whatever nature, including but not limited to sales, entertainment, and/or payroll taxes that are associated with the use of the Premises. FIU shall be held harmless from any claims for any such taxes.
- iv. Copyright Licenses/Permissions. User, for itself and on behalf of the artist or promoter of each Event, represents and warrants to FIU that all copyrighted or trademarked programming to the presented has been duly licensed or authorized by the owners of all respective intellectual property or their representatives. User shall obtain at its own expense, any licenses, and pay any royalties which User may owe for the sale of copyrighted or trademarked material at any activities contemplated under this Agreement. User hereby indemnifies and holds FIU harmless from and against any and all claims, losses or expenses that may arise in connection with the provisions contained herein.
- v. BMI/ASCAP Licenses. To the extent applicable, User shall obtain a copy of the blanket BMI and/or ASCAP license in connection with the Events. User represents and warrants that all BMI and/or ASCAP fees for the Events, if any, will be paid by User and further agrees to indemnify and hold FIU harmless from any and all claims, losses or expenses incurred with regard thereof.
- vi. Non-Discrimination: User represents and warrants to FIU that User does not and will not engage in discriminatory practices and that there shall be no discrimination in connection with User's use of the Premises or presentation of the Event on account of race, color, sex, religion, age, handicap or marital status.
- vii. Status or National Origin: User further covenants that no individual shall, solely by reason of his/her race, color, sex, religion, age, handicap, sexual orientation, marital status or national origin, be excluded from participation in, be denied services, or be subject to discrimination in connection with the use of the Premises under this Agreement.
- viii. Assignment: This agreement shall not be assigned nor sublet by any party, in whole or in part, without the prior written consent of the other party, which may be withheld, or conditioned, in such party's sole discretion.
- ix. Successors and Assigns: This Agreement shall be binding upon the parties hereto, their respective successors, or assigns.



- x. Compliance with Americans with Disabilities Act: The User understands that FIU in providing the facilities does not act as the presenter or promoter of the Events. FIU as the owner of the Premises will, to the extent required by law, be responsible for insuring that the Premises comply with applicable rules and regulations, including, without limitation, the Americans with Disabilities Act. However, it shall be the User's responsibility to ensure that any special assistive or other accommodations are provided for its disabled guests, invitees and employees of the event. Both FIU and User agrees to indemnify and hold the other party harmless from and against any and all claims, losses or expenses of any kind or nature whatsoever for any damages incurred, whether economic, punitive, compensatory or otherwise which may arise in connection with its violation of the provisions of this Section.

**Q. Default.** If either party fails to comply with any material term or condition of this Agreement and/or fails to perform any of its obligations hereunder, then that party shall be in default. Upon the occurrence of a default hereunder which is not cured within five business days after receipt of notice of default either in writing or via e-mail, the non-defaulting party, in addition to all remedies available to it by law, may immediately, upon notice to the defaulting party in writing or via e-mail, terminate this Agreement. If User is the defaulting party, all deposits, payments, advances, or other compensation paid by the User to FIU shall be forfeited and become the property of FIU. Notwithstanding any provision herein to the contrary, User's failure to make any payments due under this Agreement shall be considered a material breach entitling FIU to immediately terminate this Agreement in its discretion, without any notice or opportunity to cure said default.

**R. Termination.**

- i. Termination for Convenience: FIU shall have the right to cancel this Agreement at any time if, in the exercise of its reasonable discretion, FIU determines that the presentation of the Event, at the scheduled time, is not in the best interest of FIU due to circumstances beyond FIU's reasonable control.
- ii. Termination for Cause:
  - a) Either party shall have the right to terminate this Agreement, without notice or liability to User, upon the occurrence of an event of default after expiration of any cure period, as described above in Section Q.

**S. Governing Law.** This Agreement shall be construed, interpreted, enforced and governed by and under the laws of State of Florida. Exclusive jurisdiction and venue of any actions arising out of, or relating to or in any way connected with this Agreement shall be in Miami-Dade County, Florida. User shall abide by and comply with all applicable governmental (municipal, county, state, federal, NCAA) laws, ordinances, codes, licensing requirements, rules and regulations in its use of the Premises, including FIU Rules and Regulations, a copy of which can be viewed by User on FIU's website.

**T. Notices.**

i. Any notice to be served upon FIU, shall be served via U.S. Mail or via e-mail as follows:

Pete Garcia  
US Century Bank Arena  
FIU Athletic Offices – Suite 201  
11200 SW 8<sup>th</sup> Street  
Miami, FL 33199  
Email: [pgarcia@fiu.edu](mailto:pgarcia@fiu.edu)

ii. Any notice to be served upon User, shall be served via U.S. Mail or e-mail as follows:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Email: \_\_\_\_\_

**U. Entire Agreement.** This Agreement will constitute the full and final expression of intent by each party and no paragraph, clause, condition or privilege may be modified, varied, altered or added to by any oral agreement of the parties. All matters not authorized expressly by the written terms of this contract shall be reserved to the discretion of FIU.

**V. Authorization.** Each of the parties represents and warrants that (a) the persons executing this Agreement are duly authorized by their respective entities to execute a binding agreement; (b) this Agreement is the valid and binding agreement of such party, enforceable in accordance with its terms.

IN WITNESS WHEREOF, the parties execute this Agreement the date and year first above mentioned.

**COMPANY NAME:** \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Date: \_\_\_\_\_

**THE FLORIDA INTERNATIONAL  
UNIVERSITY BOARD OF TRUSTEES:**

By: \_\_\_\_\_  
Name: Pete Garcia  
Title: Athletic Director

Date: \_\_\_\_\_