

Facilities Use and Services Agreement

Customer	
Event Name	
Event Dates	
Customer's Representative	Name:
BYUH's Representative	Email:
	Diédra Ulii
	55-220 Kulanui St. #1963 Laie HI 96762
	(808) 675-3474
	diedra.ulii@byuh.edu

This Facilities Use and Services Agreement (this **"Agreement"**) is between Customer and Brigham Young University–Hawaii, a Utah nonprofit corporation and institution of higher education (**"BYUH"**).

Background

- A. BYUH owns and operates certain facilities and is capable of providing certain services described in this Agreement which, from time to time, it makes available to others for use; and
- B. Customer desires to use BYUH's facilities and services described in this Agreement for the Event.

Accordingly, the parties agree as follows:

Terms of Agreement

1. **Definitions.** Each term defined in the preamble, the background, and elsewhere in this Agreement has its assigned meaning, and each of the following terms has the meaning assigned to it:

"BYUH Campus" means BYUH's campus at Laie, Hawaii.

"Event Staff" means Customer's officials, employees, volunteers, presenters, agents, and third-party contractors who supervise, operate, or provide services for the Event.

"Facilities" means the

- (a) real property (including accompanying fixtures),
- (b) common areas necessary to access the real property, and
- (c) personal property, including equipment.

that BYUH will make available to Customer for the Event, as listed in the attached Facilities and Services Schedule and incorporated herein by reference.

"Participant" means an individual attending the Event as a participant.

"Services" means the services BYUH will provide for the Event, as listed in the attached Facilities and Services Schedule.

2. **Effective Date.** This Agreement is effective on the date that the last party signs and delivers this Agreement as indicated by the date stated under that party's signature line.
3. **Provision of Facilities and Services.** BYUH shall permit Customer to access and use the Facilities and Services for the Event in the manner and during the times listed on the Facilities and Services Schedule.
4. **Payment.** Customer shall make payment to BYUH for the Facilities and Services in the amount and manner listed in the attached Facilities and Services Schedule. Customer accepts full responsibility to pay all tuition, fees, and other associated costs assessed as a result of this Agreement. If Customer fails to make payment by the designated due date, or if, for the purposes of collecting the amount due, BYUH should retain an attorney or collection agency, Customer shall pay all costs of collection including reasonable interest, reasonable attorney's fees, and reasonable collection agency fees, which may be based on a percentage at a maximum of 40% of the debt.
5. **Disability Accommodations.** BYUH makes no representation or warranty that the Facilities are compliant with the Americans with Disabilities Act or any other disability laws applicable to the Event. Customer is responsible to ensure that the Event provides appropriate reasonable accommodations, consistent applicable laws and regulations, to persons with disabilities. Customer shall provide timely notice (at least 15 days) to BYUH of any special accommodations for a Participant or Event Staff that will require the cooperation of BYUH. In such case, BYUH shall make reasonable efforts to arrange for the requested accommodation if BYUH determines that the requested accommodation is warranted. Customer shall reimburse BYUH for any expense BYUH reasonably incurs in performance of this obligation.
6. **General BYUH Policies.** Customer is solely responsible for supervising the personal conduct of all Participants and Event Staff while they are on the BYUH Campus for the Event. Customer shall take reasonable measures to ensure that all Participants and Event Staff are aware of and at all times comply with all applicable laws, as well as any policies listed in this Agreement and its accompanying schedules, including the following policies:
 - 6.1 **General Standards.** Events and Event presenters must not disparage in any way the ideals or principles of BYUH and its sponsoring institution, The Church of Jesus Christ of Latter-day Saints ("**Church**"). All visitors on the BYUH Campus must abide by BYUH's standards of moral character, honesty, respect for personal and property rights, obeying the law, and general taste and decency.
 - 6.2 **Dress and Grooming.** All visitors on the BYUH Campus must maintain appropriate and modest dress and grooming. Clothing is inappropriate when it is sleeveless, strapless, backless, or revealing; has slits above the knee; or is form fitting. Dresses, skirts, and shorts must be knee length or longer. When the Event involves the use of the pool, swimming suits must be modest in fabric, fit, and style. Bikini, two-piece, or French-cut style swimming suits are not permitted. Exceptions may be made by BYUH for athletic activities.
 - 6.3 **Prohibited Substances.** The following substances are prohibited on the BYUH Campus: alcohol, tobacco, electronic cigarettes, coffee, tea, and all illegal substances.
 - 6.4 **Sexual Misconduct.** BYUH is committed to creating and maintaining a safe and respectful environment for the campus community free of sexual harassment, sexual violence, domestic violence, dating violence, or stalking ("**Sexual Harassment**"). Sexual Harassment is strictly prohibited on the BYUH Campus. BYUH reserves the right to take whatever action may be needed to prevent, investigate, correct, and discipline Sexual Harassment on the BYUH Campus. Customer shall report to BYUH's Title IX Office when it becomes aware of any incident of Sexual Harassment on the BYUH Campus during the Event and shall cooperate with BYUH in any investigation and action that BYUH, in its sole discretion, shall determine to undertake with regard to the reported incident.

- 6.5 Animals.** Animals are generally not permitted for groups visiting BYUH Campus except in accordance with state or federal law or BYUH's Animals on Campus Policy.
- 6.6 Explosives and Weapons.** Explosives, fireworks, firearms, and other weapons or dangerous items (as determined by BYUH) are prohibited on the BYUH Campus. Any exception to this policy must be approved in writing by BYUH.
- 6.7 Promotional Activities and Sales.** Recruiting, public advertising, promoting, or making sales for a business is not allowed on the BYUH Campus without prior written approval of BYUH.
- 6.8 Presenters.** BYUH's campus is not a public forum or generally a place of public accommodation. The BYUH Campus may not be used for political purposes.
- 7. Food Services.** Only BYUH Dining Services and BYUH-approved caterers and vendors are allowed to provide food services on the BYUH Campus.
- 8. Health and Safety.** Customer shall not use the Facilities in any manner that may cause a nuisance, fire hazard, or other risk to health and safety of the Participants, Event Staff, and others on the BYUH Campus. Client shall, at all times, abide by all fire and safety regulations of BYUH and other governing authorities.
- 9. BYUH's Name and Trademarks.** Customer shall not use or display BYUH's name or trademarks to imply sponsorship or endorsement by BYUH, or for any other purpose, without BYUH's express, written permission.
- 10. Respect for Others on Campus.** Customer understands that academic and other activities may be ongoing on BYUH's campus during the Event. Customer shall not engage in any activity that may be disruptive to others and shall take reasonable measures to ensure that all Participants and Event Staff are respectful of and do not disturb other activities on the BYUH Campus.
- 11. Child Protection.** If the Event involves Participants or Event Staff under 18 years of age ("**Minors**"), the following terms apply:
- 11.1 Supervision of Minors.** Customer is solely responsible for supervising, monitoring, disciplining, and ensuring the safety of Minors during the Event. Customer shall provide adult supervision to all Minors at all times during the Event at a rate of one adult supervisor for every ten Minors. BYUH reserves the right to adjust the ratio in the preceding sentence at its discretion.
- 11.2 Adult Event Staff.** Customer shall ensure that adult Event Staff who interact with or have supervisory responsibility over Minors are properly trained in child protection principles and are adequately supervised during the course of the Event.
- 11.3 No One-on-One Contact.** Customer shall take reasonable measures to ensure that Event Staff and Participants comply with BYUH's policy of no one-on-one adult contact with Minors who are not members of the same family during the Event.
- 11.4 Background Checks. Prior to the Event,** Customer shall provide documentation to BYUH confirming that all adult Event Staff who have unsupervised access to, or supervision of Minors have been subject to a criminal background check including a national sex offender registry search. Any exception to the preceding sentence must be approved in writing by BYUH.
- 12. Right to Inspect Facilities.** BYUH reserves the right to enter and inspect the Facilities for any reason, including to

- (a) ensure compliance with the policies and obligations in this Agreement and accompanying schedules;
- (b) address emergencies; and
- (c) perform maintenance and required repairs.

13. Removal from Campus. BYUH reserves the absolute right to revoke the privilege of any Participant or Event Staff to be on the BYUH Campus when his or her conduct violates any applicable law, regulation, or BYUH policy, or becomes, or threatens to become, injurious or disruptive in any way. Customer shall remove, or cooperate with BYUH to remove, from the Event and the BYUH Campus any Participant or Event Staff whose privilege to be on campus has been revoked by BYUH under the preceding sentence.

14. Disclaimer. CUSTOMER ACCEPTS THE FACILITIES "AS IS, WHERE IS, WITH ALL FAULTS." BYUH PROVIDES THE FACILITIES WITHOUT REPRESENTATION OR WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, ORAL OR WRITTEN, AND BYUH DOES HEREBY DISCLAIM ANY SUCH REPRESENTATION OR WARRANTY.

15. Indemnification and Insurance.

15.1 Indemnification. Customer shall indemnify, hold harmless, and defend BYUH, its officers, employees, volunteers, and agents (the "**Indemnified Parties**") from and against any and all claims, causes of action, liabilities, obligations, judgements, losses, damages (including punitive damages), settlement payments, costs and expenses (including reasonable attorney's fees), interest, awards, judgments, diminution in value, fines, fees, penalties, or other charges arising out of or relating to the Event ("**Claims**"), except to the extent that the Claims arise from the negligence or willful misconduct of one or more of the Indemnified Parties.

15.2 Insurance.

15.2.1 Required Coverage. Customer shall obtain and maintain during the Event insurance coverage at least as broad as the following:

- (a) Commercial General Liability ("**CGL**"): Insurance Services Office (ISO) Form CG 00 01 covering CGL on an "occurrence" basis, including products and completed operations, broad form property damage, bodily injury and personal & advertising injury with limits no less than **\$1,000,000**. If a general aggregate limit applies, the general aggregate limit shall be twice the required occurrence limit.
- (b) Automobile Liability: ISO Form Number CA 00 01 covering any auto (Symbol 1), or if Customer has no owned autos, covering hired, (Symbol 8) and non-owned autos (Symbol 9), with limit no less than \$1,000,000 Combined Single Limit for bodily injury and property damage.
- (c) Workers Compensation: As required by the State of Hawaii, with Statutory Limits and Employer's Liability Insurance with limits of no less than \$1,000,000 per accident for bodily injury and disease.
- (d) Umbrella or Excess Liability: With bodily injury, personal injury, and broad form property damage liability coverage with each occurrence and general aggregate limits no less than \$1,000,000.
- (e) Other insurance, as deemed appropriate by BYUH, and depending on the nature of and the risk factors associated with the event.

15.2.2 Additional Insured Endorsement. Customer shall ensure that all liability policies required by this Agreement provide or are endorsed to provide BYUH, its officers, Board of Trustees, officials, employees, and volunteers are additional insureds on a primary and non-contributory basis.

15.2.3 Waiver of Subrogation. Customer hereby grants to BYUH a waiver of any right of subrogation which the workers compensation insurer of Customer may acquire against BYUH by virtue of the payment of any loss under such insurance. Customer agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not BYUH has received a waiver of subrogation endorsement from the insurer.

15.2.4 Certificates. Customer shall furnish BYUH with original certificates and amendatory endorsements or copies of the applicable policy language effecting coverage required by this Agreement. All certificates and endorsements must be received and approved by BYUH before the Event commences and Customer shall maintain and update them for the duration of the contractual relationship. The failure of Customer to timely obtain and deliver to BYUH the documents required by the section does not constitute a waiver of Customer's obligation to provide them. The certificate holder on the documents required by this section must read as follows:

Brigham Young University–Hawaii
c/o University Scheduling Department
BYU–Hawaii #1963
55-220 Kulanui Street
Laie, Hawaii 96762-1293

The Description of Operations section of the certificates of insurance required by this section must outline the specifics of the Event to which the insurance applies.

15.2.5 Pass Through Clause. Customer shall ensure that its sub-consultants, sub-contractors, and any other party involved with the Event who is brought onto or involved in the Event by Customer, provide the same minimum insurance coverage and endorsements required by Customer. Customer shall monitor and review all such coverage and assumes all responsibility for ensuring that such coverage is provided in conformity with the requirements of this section. Upon request by BYUH, Customer shall submit to BYUH for review all agreements with consultants, sub-contractors, and others engaged in the Event.

15.2.6 Special Risks or Circumstances. The liability of all equipment and supplies is the sole responsibility of the Customer. Under no circumstances will BYUH incur any liabilities whatsoever for damages, pilferage, acts of violence, fire, theft, or other fault.

16. Cancellation and Termination.

16.1 Cancellation or Termination without Cause. The terms under which the parties may cancel or terminate this Agreement without cause are set forth in the Facilities and Services Schedule.

16.2 Termination for Cause. If Customer fails to make timely payment or is in material breach of any of the terms set forth in this Agreement, BYUH may suspend its own performance hereunder or

terminate this Agreement upon notice to Customer. Upon such termination, BYUH retains any deposits or payments made by Customer under this Agreement.

17. Miscellaneous.

- 17.1 Assignment and Delegation.** No benefit inuring to either party under this Agreement may be assigned, and no duty imposed on either party may be delegated, without the prior written consent of the other party. A purported assignment or purported delegation in violation of this section is void.
- 17.2 Independent Contractors.** The parties agree that they are independent contractors and nothing in this Agreement may be deemed to establish a joint venture, partnership, agency, or employment relationship between the parties. Neither party has the right or authority to assume or create any obligation or responsibility on behalf of the other.
- 17.3 Severability.** Despite any provision of this Agreement that is held to be invalid or unenforceable, the validity, legality, and enforceability of all provisions of this Agreement between the parties are not affected or impaired in any way.
- 17.4 Notices.** Except as otherwise indicated, notices to be given under this Agreement are sufficient if given in writing by personal delivery, certified or registered mail, or electronic mail addressed to the other party's representative designated on the first page of this Agreement. Such notices are deemed to have been given on the day when actually received by the party to whom the notice is given.
- 17.5 Governing Law and Submission to Jurisdiction and Venue in Hawaii.** The laws of the State of Hawaii, without giving effect to its conflicts of law principles, and the laws of the United States, govern all matters arising under and relating to this Agreement, including torts. The parties submit to the jurisdiction of and venue in the federal and state courts located within the State of Hawaii and any legal action arising out of or related to this Agreement, including torts, must be initiated exclusively in the federal courts of the United States located in Honolulu, or the courts of the State of Hawaii located in Honolulu.
- 17.6 Force Majeure.** Delay in performance or nonperformance in whole or in part by a party is not a breach of this Agreement if the delay or nonperformance is not the result of the defaulting party's intentional or negligent acts or omissions but results from causes whether foreseeable or not foreseeable, beyond the reasonable control of the nonperforming party such as, but not limited to war, flood, lightning, drought, earthquake, fire, volcanic eruption, landslide, hurricane, cyclone, typhoon, tornado, explosion, civil disturbance, act of God or the public enemy, terrorist act, military action, epidemic, famine or plague, government action, or industry-wide, region-wide or nationwide strike or other labor difficulty.
- 17.7 Entire Agreement.** This Agreement constitutes the final and exclusive agreement between the parties on the matters contained in this Agreement. All earlier and contemporaneous negotiations and agreements between the parties on the matters contained in this Agreement, whether written or oral, are expressly merged into and superseded by this Agreement. This Agreement cannot be amended except by a writing signed by authorized representatives of both parties.
- 17.8 Counterparts and Electronic Signatures.** This Agreement may be executed and delivered in any number of counterparts, each of which so executed and delivered is deemed to be an original and all of which constitute one and the same instrument. Facsimile, documents executed, scanned, and transmitted electronically, and electronic signatures are deemed original signatures for

purposes of this Agreement and all matters related thereto, with such facsimile, scanned, and electronic signatures having the same legal effect as original signatures.

The parties have caused this Agreement to be duly signed as of the effective date listed in Section 2.

[full legal name of Customer]

Brigham Young University–Hawaii

Signature: _____

Signature: _____

Print Name: _____

Print Name: _____

Title: _____

Title: _____

Dated: _____

Dated: _____

DRAFT