

## DISCLAIMER

**This is a sample facility agreement highlighting some of the more important issues that should be considered when entering into a contract for an external entity to use your pool/facility. As the law varies from jurisdiction to jurisdiction and special situations require possible revisions to contractual terms, an attorney should be consulted prior to using this contract.**

## POOL LICENSE AGREEMENT

This Agreement (“Agreement”) dated \_\_\_\_\_, 200\_\_, is entered into, by and between \_\_\_\_\_ (“OPERATOR”), as manager and operator of the \_\_\_\_\_ Facility (“Facility”) and surrounding/adjoining facilities, and \_\_\_\_\_ (“LICENSEE”) with a business address at \_\_\_\_\_.

WHEREAS OPERATOR is defined to include the Board of Directors, officers, employees, agents, representatives, and any and all other personnel with fiduciary responsibility for operating, managing, and working with/for the Facility. All such individuals are expressly covered by the terms of this Agreement.

WHEREAS the FACILITY can include, based on limitations highlighted in the Agreement herein, a large/main facility, smaller pools, diving areas, water slides, snack bar, other sport surfaces/areas, locker/changing rooms, and other areas as defined by the OPERATOR. Any area not specifically mentioned in the Agreement is expressly outside the scope of the defined FACILITY.

WHEREAS, LICENSEE desires to use the FACILITY, located at \_\_\_\_\_, as described herein and for the purpose described below, and OPERATOR desires to grant LICENSEE use of such premises for such purpose, subject to the terms and conditions contained herein;

NOW THEREFORE, in consideration of the mutual agreements herein contained, and intending to be legally bound hereby, the parties hereto agree as follows:

### 1. TIME FOR EXECUTION

This Agreement, at OPERATOR’s sole option, may be deemed null and void if not executed by the LICENSEE and received by the office of the General Manager at the FACILITY by close of business on: \_\_\_\_\_. This Agreement will not be in force or binding until it has been executed by each of the parties hereto.

### 2. TERM / LICENSED SPACE

In consideration of the fees, costs and charges hereinafter provided, the mutual agreements contained herein, and subject to the terms and conditions hereinafter stated, OPERATOR hereby permits LICENSEE to enter into and use, and LICENSEE shall enter into and use, solely for the purpose designated by this Agreement, the following area(s) of the FACILITY, hereinafter referred to as “LICENSED SPACE”, on the following dates and at the times on those dates as set forth in the table below:

#### LICENSED SPACE

(Specify where people can go, what equipment they can use, what time and dates they can use the facility, etc...)

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License Fee: \$ \_\_\_\_\_ (hereinafter referred to as “LICENSE FEE”)

LICENSEE shall not place or move any personnel, equipment, or materials into or about the FACILITY prior to the beginning of the LICENSE PERIOD unless OPERATOR grants express, prior written approval for the earlier use thereof. Upon the expiration of the LICENSE PERIOD, LICENSEE shall immediately remove from the FACILITY, any and all property, goods, or other effects belonging to LICENSEE, its employees, agents, contractors, representatives, patrons, guests and/or invitees, or caused to be brought in or onto the FACILITY by any of them (collectively, the “LICENSEE PROPERTY”). If such LICENSEE PROPERTY is not removed from the FACILITY immediately upon the expiration of the LICENSE PERIOD, OPERATOR may store or cause to be stored any LICENSEE PROPERTY remaining in or about the FACILITY and LICENSEE shall pay a reasonable fee for such storage and all expenses incurred therefore, or shall reimburse OPERATOR for such costs immediately upon receipt from OPERATOR of an invoice therefor. If such stored LICENSEE PROPERTY is not claimed by LICENSEE or its agent or representative and storage fees not paid within ten (10) days of LICENSEE’s receipt of notice from OPERATOR, such LICENSEE PROPERTY shall be deemed abandoned and OPERATOR shall then have the right to sell such stored LICENSEE PROPERTY in such a manner and to such an extent as is permitted by applicable state and/or local law and to apply the proceeds of such sale(s) in a manner determined by OPERATOR in its sole and unfettered discretion.

LICENSEE shall have the privilege of ingress and egress to the FACILITY, use of the specified FACILITY areas, and use of any ancillary locations as expressly authorized by OPERATOR above. LICENSEE shall have no access rights or privileges in or to any other part of the FACILITY unless previously designated in writing by OPERATOR. All time periods stated in this Agreement shall be of the essence and the time herein shall not be extended for the occupancy or use of the LICENSED SPACE without the express written permission of OPERATOR.

### 3. LICENSE FEE / DEPOSIT / PAYMENT

For the privilege to enter into and use the LICENSED SPACE, LICENSEE shall pay to OPERATOR the LICENSE FEE identified in Section 2 of this Agreement, as well as all reimbursable expenses described herein and any other amounts due or payable to OPERATOR as described hereunder.

One month prior to the date LICENSEE will use the FACILITY as highlighted in the LICENSED SPACE section above, a “SECURITY DEPOSIT”, shall be paid by LICENSEE to OPERATOR to reserve the LICENSED SPACE and as security for LICENSEE’s obligations hereunder. The SECURITY DEPOSIT shall be deposited with OPERATOR in the amount of \$\_\_\_\_\_.

If the SECURITY DEPOSIT is not paid on or before the respective due dates specified above, this Agreement shall be subject to cancellation by the OPERATOR, at OPERATOR’s sole and unfettered discretion. The SECURITY DEPOSIT is non-refundable except in cases where OPERATOR is unable

to deliver access to the LICENSED SPACE or comparable space at the FACILITY.

Within approximately ten (10) days following the end of the LICENSE PERIOD, OPERATOR shall either (i) deliver to LICENSEE an invoice for additional amounts due by LICENSEE hereunder and not previously paid to OPERATOR (which invoice shall be due and payable within thirty (30) days of LICENSEE's receipt thereof), or (ii) provide a credit to LICENSEE in the event that LICENSEE has paid OPERATOR in excess of the total amount due and payable to OPERATOR.

All sums due and owing to OPERATOR by LICENSEE under this Agreement that have not been paid by the date such amounts are due shall bear interest at the rate of one and one half percent (1.5%) per month (or portion thereof) until the date payment is made. Any checks issued by LICENSEE and returned to OPERATOR by a financial institution for any reason, and any costs or expenses incurred by OPERATOR in relation thereto, will be added to the amounts owed by LICENSEE hereunder and shall be due to OPERATOR with an additional Thirty-Five Dollar (\$35.00) per check handling fee.

**4. PURPOSE OF USE / MANNER**

The FACILITY shall be used exclusively for \_\_\_\_\_(Insert specific terms such as swim classes, aquatic play, recreational swimming, lap swimming, or other specified activity such as party on the facility deck)\_\_\_\_\_, and no other purpose.

**5. SPECIAL PROVISIONS (If Applicable)** (Insert any special clauses such as there needs to be adult supervision, vans need to be parked at the side of the lot to allow others to park near the facility entrance, etc... or write Not Applicable)

**6. INDEMNIFICATION**

- A. LICENSEE hereby agrees to indemnify, defend (at OPERATOR's option), and hold harmless OPERATOR and each of its officials, officers, agents, employees, volunteers, successors and assigns, collectively hereinafter referred to as "INDEMNIFIED PARTIES", from and against any and all claims, demands, defense costs, liability, expense, or damages (direct and indirect) of any kind or nature arising from or in connection with LICENSEE's use and/or occupancy of the FACILITY, or arising out of any act or omission of LICENSEE or any of LICENSEE's employees, agents, exhibitors, contractors, representatives, patrons, guests or invitees.
- B. Without limiting the foregoing, LICENSEE further agrees to assume all risk, and to indemnify, defend and hold harmless the INDEMNIFIED PARTIES from and against any and all claims, demands, defense costs, liability, expense, or damages (direct and indirect) of any kind or nature arising out of or in connection with damage to or loss of any property belonging to LICENSEE or LICENSEE's employees, agents, contractors, representatives, patrons, guests, or invitees.
- C. LICENSEE further agrees to indemnify the INDEMNIFIED PARTIES for damage to or loss of their property arising out of or in connection with LICENSEE's use and/or occupancy of the FACILITY, or arising out of any act or omission of LICENSEE or any of LICENSEE's employees, agents, contractors, representatives, patrons, guests or invitees.

**7. INSURANCE:**

Without limiting the INDEMNIFIED PARTIES' right to indemnification hereunder, LICENSEE shall, at its sole cost and expense, procure and maintain throughout the term of this Agreement the following insurance, and under the following terms:

- A. Commercial General Liability Insurance, including coverage for operations, contractual liability, personal injury, products/completed operations liability, broad-form property damage, and independent contractor liability in an amount not less than one Million Dollars (\$1,000,000) per occurrence, written on an occurrence form.
- B. Comprehensive Automobile Liability Coverage, including owned and hired vehicles, in an amount not less than One Million Dollars (\$1,000,000) per occurrence, combined single limit, written on an occurrence form.
- C. Worker's Compensation Insurance and Employee's Liability Coverage as required by the State of \_\_\_\_\_.

**Each insurance policy required under this Agreement, excepting policies for worker's compensation, shall name \_\_\_\_\_, and each of their officers, officials, agents, employees, successors and assigns as additional insureds.**

Not later than twenty-one (21) days prior to the commencement of the LICENSE PERIOD, LICENSEE shall deliver to OPERATOR certificates of insurance evidencing the existence of the above-required insurance and compliance with the above-referenced additional insured clause. Such certificate(s) must be in a form reasonably acceptable to OPERATOR. Certificate(s) of Insurance must be signed by an authorized representative of the insurance company.

**Certificate Holder to be listed as:** \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Any insurance required under this Agreement must be written by an insurance company licensed to conduct business in the State of \_\_\_\_\_ and carrying a rating of A-VIII or better in the most recent BEST's rating system. LICENSEE agrees that failure to provide required insurance certificate(s) to OPERATOR prior to deadlines stated herein will constitute immediate material breach of this Agreement by LICENSEE and OPERATOR may, at its sole option, exercise any rights it may have under this Agreement.

Nothing herein contained shall be construed as limiting in any way the extent to which LICENSEE may be held responsible for damages to persons or property resulting from LICENSEE's (or LICENSEE's contractor's) use and occupancy of the FACILITY, or LICENSEE's obligations under this Agreement. It is agreed that the insurance required to be maintained by LICENSEE hereunder shall be primary and not contributory with any coverage provided by any of the INDEMNIFIED PARTIES.

**8. SAFETY**

- A. LICENSEE agrees that at all times LICENSEE, its agents, employees and representatives will conduct its or their activities with full regard to public safety, and will observe and abide by all facility rules/regulations, applicable laws, regulations and requests by OPERATOR, facility management/manager, lifeguards, and any and all duly authorized governmental officials/agencies responsible for public safety.
- B. OPERATOR reserves the right to make any announcements as it may deem necessary, in its sole and unfettered discretion and at any time to enforce FACILITY rules and in the interest of public safety. LICENSEE agrees that it will cooperate with OPERATOR in making such announcements.

OPERATOR reserves the right to cause the interruption of any LICENSEE FACILITY use or individuals use of the FACILITY for their own safety and the safety of others in the interest of public safety.

- C. LICENSEE understands and guarantees that safety is their primary objective while using or being in or around the FACILITY. As a FACILITY represents unique risks such as drowning or serious head/neck injuries, LICENSEE expressly agrees that all FACILITY users brought to the FACILITY by the LICENSEE will be tested in accordance with the OPERATOR's Rules and Regulations to determine swimming capability. All LICENSEE's FACILITY attendees and their parents will have received and reviewed the OPERATOR's Rules and Regulations and will be briefed by the LICENSEE concerning appropriate conduct in and around the FACILITY. LICENSEE understands that there are numerous safety concerns from slip and fall to contusion injuries that can occur in and around the FACILITY and that LICENSEE and its users need to be vigilant for their own safety and the safety of others.
- D. LICENSEE agrees that at no time will any of their FACILITY attendees be in the FACILITY area when there is not enough Lifeguards on duty. The proper number of required lifeguards for the pool is highlighted in the attached Addendum of the OPERATOR's Rules and Regulations.
- E. LICENSEE agrees that at all times they will provide appropriate adult supervision in the FACILITY area at the rate of \_\_\_\_\_ adults for every \_\_\_\_\_ minors under the age of eighteen (18).
- F. Any violation of any Safety rules, regulations, or conditions herein will result in immediate termination of this Agreement and Forfeiture of any Security Deposit with the LICENSEE required to pay any and all owed monies.

#### **9. OPERATOR'S RIGHT TO ENTER / CONTROL OF PREMISES**

OPERATOR shall retain at all times the right to control the management of the FACILITY in its sole and unfettered discretion and to enforce all rules regarding the management and operation thereof. Nothing in this Agreement, nor the act of permitting the use of the FACILITY or any portion thereof, shall be interpreted as relinquishing such rights of OPERATOR.

#### **10. OBJECTIONABLE PERSONS**

OPERATOR reserves the right to eject or otherwise remove at any time any objectionable person or persons from the FACILITY. LICENSEE hereby waives any and all rights and claims for damages (direct and indirect), including without limitation claims for assault, trespassing, battery, or similar intentional torts, as a result of exercising this right, and shall indemnify and hold harmless the INDEMNIFIED PARTIES therefrom in accordance with Section 6 of this Agreement.

#### **11. NOTICES**

All notices required or permitted to be given pursuant to this Agreement shall be in writing and delivered personally or sent by registered or certified mail, return receipt requested, or by generally recognized, prepaid, overnight air courier services, to the addresses set forth in the opening paragraph hereof. Any notice shall be deemed to have been properly provided when delivered, if delivered personally, three (3) days after mailed, if sent by registered or certified mail, or the next business day, if sent by generally recognized, prepaid, overnight air courier services. Either party may notify the other of any change in address by following the procedures set forth in this paragraph.

#### **12. NON-DISCRIMINATION / AMERICANS WITH DISABILITIES ACT**

LICENSEE agrees not to discriminate against any employee or applicant for employment to be employed in the performance of or in relation to this Agreement, with respect to the hire, tenure, terms, conditions or privileges of employment, or any other matter directly or indirectly related to such employment, whether on account of race, marital status, color, religion, national origin, ancestry, age, sex, or handicap except where based on a bona-fide occupational qualification. Breach of this covenant by LICENSEE shall be regarded as a material breach of this Agreement.

With respect to LICENSEE's Use of the FACILITY, LICENSEE recognizes that it is possibly subject to the provisions of Title III of the Americans With Disabilities Act, as amended ("ADA"). To the extent that LICENSEE reconfigures, modifies, alters, rearranges, or otherwise prepares or "sets up" the LICENSED SPACE or any other portion of the FACILITY in order to accommodate LICENSEE's use, LICENSEE shall be responsible for ensuring that the FACILITY and the LICENSED SPACE comply (and continue to comply throughout the longer of the LICENSE PERIOD or such period of time that the LICENSED SPACE or the FACILITY remain so modified) in all respects with the ADA, including without limitation with regard to accessibility, usability, and configuration. LICENSEE shall be solely responsible for any violations of the ADA that arise directly or indirectly from any such reconfiguration or other modification by LICENSEE. LICENSEE shall be solely responsible for providing auxiliary aids or any modification of the LICENSED SPACE or other portions of the FACILITY that may be required in order to accommodate LICENSEE's use, and for ensuring that the policies, practices, and procedures it applies in connection with the FACILITY usage are in full compliance with the ADA.

#### **13. BREACH / TERMINATION**

In the event either party fails to perform any of its obligations hereunder, the non-breaching party shall give the breaching party notice in writing of such breach. If the breaching party does not cure said breach within five (5) days after receipt of notice of a monetary breach or a breach of Section 7, or within thirty (30) days after receipt of notice of a breach of any other nature, the non-breaching party shall have the right, at its option, to (i) cancel this Agreement by giving five (5) days written notice thereof to the breaching party, (ii) sue the breaching party for legal or equitable relief, and/or (iii) pursue any other remedy allowed hereunder or under applicable law; provided, however, in the event OPERATOR may suffer irreparable harm as a result of a breach by LICENSEE, OPERATOR shall not be required to give written notice to the LICENSEE, or to wait any period of time before pursuing any remedies hereunder or under applicable law. No such cancellation or termination by OPERATOR shall relieve LICENSEE from its obligation to pay all amounts due hereunder.

#### **14. CANCELLATION BY LICENSEE**

Subject to Section 15(B) of this Agreement, in the event of a cancellation of using the FACILITY by LICENSEE, LICENSEE shall be obligated to pay to OPERATOR fifty percent (50%) of the LICENSE FEE together with any and all reimbursable expenses incurred or to be incurred by OPERATOR in connection with the FACILITY usage, and any and all other sums due to OPERATOR pursuant to this Agreement. The parties agree that OPERATOR will be damaged by any such cancellation, and that the exact amount of such damages would be either impossible or inconvenient to prove, and that the amounts set forth in the preceding sentence are a reasonable estimate of the amount of such damages. The parties further agree that such amount shall constitute liquidated damages, and not a penalty of any kind. The remedies set forth in this section are in addition to, and not in lieu of, any other rights or remedies OPERATOR may have, at law or in equity, in the event of a breach or cancellation of this Agreement by LICENSEE.

#### **15. FORCE MAJEURE**

In the event that either party to this Agreement is delayed or prevented from the performance of any act or obligation hereunder because of, war, riot, public emergency or calamity, unavailability of repair parts or materials, defects in the FACILITY, strike, lockout, labor disturbance, fire or other casualty, explosion, accidents, failure of power, interruption of transportation services, severe storm, earthquake, lightning, flood, Acts of Nature, terrorist acts, restrictive governmental laws, regulations, order or decrees or other reasons that are not reasonably within the control of the party claiming the right to

delay the performance on account of such occurrence, hereinafter referred to as "FORCE MAJEURE" (provided however that in no circumstances shall the monetary inability of a party to perform any covenant, agreement or other obligation contained in this Agreement be construed to be a Force Majeure), then the following provisions shall apply:

- A. If the FORCE MAJEURE prevents OPERATOR from making the FACILITY available for use by LICENSEE as contemplated hereunder, or otherwise renders fulfillment of this Agreement by OPERATOR impracticable, then, without liability to OPERATOR or LICENSEE, OPERATOR's obligations arising under this Agreement shall be suspended or excused to the extent commensurate with the FORCE MAJEURE, and OPERATOR shall not be liable or responsible to LICENSEE for any damage or loss caused thereby. In such event, OPERATOR shall return the SECURITY DEPOSIT less any actual expenses incurred by the OPERATOR, which will be applied as described in Section 15(C).
- B. If the FORCE MAJEURE affects LICENSEE and causes LICENSEE to be unable to take possession of the LICENSED SPACE or use the FACILITY, neither LICENSEE nor OPERATOR shall have any liability under this Agreement, but LICENSEE shall be responsible for all costs or expenses actually incurred by OPERATOR prior to being notified by LICENSEE that it will be unable to take possession of the LICENSED SPACE or use the FACILITY. In such case, OPERATOR may return the SECURITY DEPOSIT less any actual expenses incurred by the OPERATOR, which shall be applied as described in Section 15(C) below.

Except as set forth in Section 15(C) above, the LICENSE PERIOD shall not be extended and OPERATOR shall not be obligated to provide the LICENSED SPACE to LICENSEE for use during any other period in substitution for the FORCE MAJEURE period.

#### **16. COMPLIANCE WITH LAWS AND REGULATIONS.**

- A. LICENSEE will comply with all applicable federal, state and local laws, rules, regulations and ordinances. LICENSEE shall also comply with all FACILITY rules and regulations as set forth in the attached Addendum which is expressly integrated into this Agreement, and LICENSEE will require and ensure such compliance from each of its agents, employees, contractors, exhibitors, patrons and invitees. LICENSEE acknowledges receipt of the FACILITY's rules and regulations, and agrees to adhere to, and to require and ensure that each of its agents, employees, contractors, exhibitors, patrons and invitees adhere to, all of the policies, rules and regulations contained therein.
- B. No activity in violation of federal, state or local laws, rules, regulations or ordinances shall be permitted in or about the LEASED SPACE or the FACILITY, and it shall be the responsibility of LICENSEE to enforce this provision. No lewd or indecent actions, conduct, language, pictures or portrayals shall be used in and around the FACILITY, and nothing shall be presented, used, or sold at or around the FACILITY that is contrary to law or prohibited in any manner by OPERATOR. LICENSEE agrees to abide and be bound by the decisions of OPERATOR (in its sole and unfettered discretion) should any questions or disputes arise under this Section 16(B).

#### **17. SUIT TO ENFORCE.**

In any action to enforce the terms or underlying basis of this Agreement, the prevailing party shall be entitled to all costs, expenses and reasonable attorneys fees that may be incurred or paid by such party in enforcing the covenants and provisions of this Agreement or in collecting any amounts due hereunder.

#### **18. ARBITRATION**

In any action relating to enforcement or interpretation of any terms or conditions contained in this Agreement, the OPERATOR and LICENSEE agree to try and resolve any dispute amicably. If no such resolution can be obtained, the parties expressly agree to pursue mediation utilizing a neutral third party mediator. If no resolution is obtained through mediation the parties expressly agree to pursue binding final arbitration through the American Arbitration Association (AAA) utilizing all the rules and regulations followed by the AAA. Any arbitration ruling will be final and binding and both parties agree to be bound by such ruling and will not pursue any remedies through any and all court actions.

#### **19. GOVERNING LAW / SEVERABILITY / WAIVER**

This Agreement shall be governed by, construed and enforced in accordance with the laws of the State of \_\_\_\_\_. If any portion of this Agreement is held invalid under any applicable statute or rule of law, then only such portion shall be deemed invalid and the remainder of this Agreement shall not be affected thereby and shall remain in full force and effect. No waiver or failure to exercise any right, option or privilege under the terms of this Agreement on any occasion shall be construed to be a waiver of any other right, option or privilege on any other occasion, nor shall any waiver constitute a continuing waiver. No waiver shall be binding unless executed in writing by the party making the waiver.

#### **20. HEADINGS**

The headings used in this Agreement are inserted only as a matter of convenience and for reference and in no way define, limit or describe neither the scope of this Agreement or the intent of any provision thereof.

#### **21. ENTIRE AGREEMENT**

This document, including the FACILITY's rules and regulations referenced herein, contains the entire agreement between the parties with respect to the subject matter hereof. No promise, representation, warranty or covenant not included in this document has been or is relied upon by any party. No waiver, modification, or amendment of this Agreement shall be in force or effect unless in writing and executed by all parties hereto. Only the OPERATOR'S \_\_\_\_\_ can sign on behalf of the OPERATOR to modify this Agreement in any way.

#### **22. BINDING EFFECT / ASSIGNMENT**

All terms and conditions of this Agreement shall be binding upon the parties, their successors, and permitted assigns. LICENSEE may not assign this Agreement without the express, prior written consent of OPERATOR.

#### **23. AUTHORIZED SIGNATURES**

Each individual executing this Agreement represents and warrants that he or she is duly authorized to execute this Agreement on behalf of their respective party and that this Agreement is binding upon both parties without the approval of any other person.

#### **24. LICENSE AGREEMENT**

This Agreement does not confer upon LICENSEE, or any of its employees, agents, exhibitors, contractors, representatives, patrons, guests or invitees, any property rights in or to the LICENSED SPACE, the FACILITY or any portion thereof.

**IN WITNESS WHEREOF**, the parties hereto have caused these presents to be executed and dated the day and year first above written.

**OPERATOR:**

**LICENSEE:**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Print Title

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