

FLORIDA INTERNATIONAL UNIVERSITY

TERMS AND CONDITIONS

EXTERNAL CUSTOMERS

Please be certain to print a copy for your records

- Premises.** Subject to these terms and conditions and any additional terms and conditions set forth in the Confirmation (collectively, the “Agreement”), CUSTOMER may use the space or spaces and equipment (collectively, as applicable, the “Premises”) described in the Confirmation.
- Use of Premises.** CUSTOMER may use the Premises only for the purpose of hosting the event listed on the Confirmation (the “Event”) on the date(s) and during the time(s) listed on the Confirmation (the “Use Period”). If rehearsal time for the Event is required, it must be scheduled at the time of reservation, and is subject to availability. The Florida International University Board of Trustees (together with its affiliates, “FIU”) reserves the right to terminate this Agreement and cancel the reservation where inaccurate representation of the Event or incomplete details have been provided. FIU reserves the right to reassign the reservation to similar facilities if the needs of FIU require such a reassignment. Reservations are not transferable, nor may CUSTOMER turn over the Premises for use by another customer without the express prior written approval of FIU. CUSTOMER further understands that it shall have the right of ingress and egress through the halls and corridors of the building(s) where the Premises are located (to the extent applicable), but acquires hereby no other right in any part of the building(s). No CUSTOMER PARTIES may prohibit FIU staff from accessing the Premises, cover the windows or lock the doors of the Premises prior to, during or after the Event.
- Compensation.** CUSTOMER agrees to pay FIU the “Grand Total” sum itemized in the Confirmation, plus all applicable Florida sales tax, for the use rights granted under this Agreement, whether the Premises are actually used by CUSTOMER for the full Use Period or not (the “Use Fee”). CUSTOMER agrees to pay the Use Fee as follows:

Date	Percentage of Use Fee
Within five (5) business days from receipt of the reservation estimate	Thirty percent (30%) of Room Charges (the “Deposit”)
Ninety (90) days before the Event (and for a multi-day Event, ninety (90) days before the first day of the Use Period)	Remaining balance (the “Balance”)

Payment shall be made in the form of credit card, electronic funds transfer or by check¹ payable to “Florida International University,” which check shall be sent to the Central Reservation Office, Modesto Maidique Campus, Address: 11200 SW 8th Street, GC-1210, Miami, Florida 33199. FIU will accommodate customer’s wishes to see a purchase order number displayed on reservation confirmations, however the payment of the Use Fee as described above is still required.

¹ Including Corporate Checks, Cashiers’ Checks, and Money Orders

CUSTOMER will receive a reservation estimate, and CUSTOMER shall have five (5) business days from receipt of the reservation estimate to tender the Deposit. The Premises will be held for CUSTOMER during said five-day period. CUSTOMER acknowledges and agrees that CUSTOMER'S failure to make any payments due under this Agreement on the respective due dates shall entitle FIU to cancel the reservation, to permit other customers to use the Premises and to immediately terminate this Agreement, as applicable. If a paper check or E-check is returned by a bank for any reason, (i) a returned check fine based on the total amount of the check will be added to the reservation and, (ii) subsequent payments on reservations at FIU must be made by credit card, debit card, money order or cashier's check. CUSTOMER will not be able to continue with existing reservations or make new reservations until all amounts owed on returned checks and fines are paid in full.

FIU will calculate final charges upon completion of CUSTOMER'S Event and, to the extent applicable, will bill the CUSTOMER for any additional charges not previously paid. Any additional payment shall be submitted to FIU within five (5) business days after CUSTOMER'S receipt of an invoice from FIU, and payment shall be made in the form of credit card, debit card, money order or cashier's check. Misrepresentations regarding Event details may result in adjustment of the User Fee.

Notwithstanding the chart above, if there are less than ninety (90) days between the date of the reservation and the first day of the Use Period, the "Grand Total" sum itemized in the Confirmation is due and payable in full at the time of reservation, and payment shall be made in the form of credit card, debit card, money order or cashier's check.

Rescheduling of the Use Period is only permitted one time, is subject to availability, and a rescheduling fee may apply.

4. **Refunds.** The Deposit is nonrefundable except for cases of force majeure or for an FIU Discretionary Termination (as defined in Section 13). The Balance, as applicable, is refundable if the reservation is cancelled prior to ninety (90) days before the Event, after which it becomes non-refundable. Fees for services to be provided by FIU are refundable at any time prior to seven (7) days before the Event.
5. **General Conditions of Use.** CUSTOMER agrees that CUSTOMER, its employees, contractors, agents, representatives, invitees, guests, and each of its participants (together, the "CUSTOMER PARTIES") shall comply with each of the following terms and conditions during use of the Premises:
 - a. **Proper Use and Care of the Premises.** CUSTOMER PARTIES are responsible for the proper use and care of any FIU property, including, but not limited to, the Premises. CUSTOMER agrees that it will not use tape to affix items to the walls, or drive or permit to be driven, nails, hooks, tacks or screws into any part of the Premises, building or equipment contained therein and will not make nor allow to be made any alterations of any kind to the Premises, building or equipment contained therein. No animals are allowed at any FIU lands occupied or controlled by FIU, including but not limited to any campus (an "FIU Location"), provided however, that (i) service animals, defined as a dog or miniature horse used as an accommodation who is individually trained to do work or perform tasks for the benefit of an individual with a qualifying disability, are permitted, and (ii) emotional support animals, defined as a domesticated animal that may provide physical assistance, emotional support, calming, stability, and other kinds of assistance, but which is not a

service animal, are not allowed into public areas of any FIU Location and are only allowed in residence halls with immediate access to outdoor areas. Skateboards, skates, rollerblades, bicycles, hover-boards, and other recreational equipment must be carried while in the Premises. CUSTOMER will be liable for the repair and/or replacement cost of any FIU property, including, but not limited to, the Premises, which is damaged, destroyed or lost, resulting from Event related activities.

b. Smoking. All FIU Locations are smoke-free, and smoking and/or use or sale of any tobacco product is prohibited in all areas of all FIU Locations. CUSTOMER PARTIES may not smoke traditional or electronic cigarettes, cigars, or pipes (including hookah or vaping) on any FIU Location, including inside the Premises. CUSTOMER will be charged for the cost of cleaning or eliminating smoke odors or stains in the Premises.

c. Restoration of Premises Following the Event. CUSTOMER at its expense shall clean-up and restore the Premises immediately after usage to the same condition provided to CUSTOMER prior to its use of the Premises. Costs will be assessed to CUSTOMER for clean-up and restoration by FIU if CUSTOMER's clean-up/restoration is not satisfactory in FIU's sole and absolute discretion. Any property that is left in, on, or around the Premises following the conclusion of the Event shall be deemed abandoned, FIU may elect not to store same, and any abandoned property may be disposed of at the discretion of FIU.

d. "AS IS" Status of the Premises. CUSTOMER accepts the Premises in "**AS IS**" condition.

e. Compliance with Laws. CUSTOMER PARTIES shall abide by all applicable federal, state, and local laws, rules and regulations, including, but not limited to, environmental laws, federal and state rules and regulations regarding political campaigns and elections (to the extent applicable), and FIU policies, procedures, rules and regulations, including those related to promotion, parking and signage (collectively, the "Laws") in performing this Agreement, including, but not limited to, in its use of the Premises. CUSTOMER understands that FIU regulations, policies and/or procedures can be viewed on FIU's website at <https://reservespace.fiu.edu/terms-conditions/>. Without limiting any other provision of this Agreement, FIU may cancel the reservation at any time if FIU determines, in its sole discretion, that any actions by any of the CUSTOMER PARTIES constitute a violation of any Laws and FIU shall not be subject to any liability for said cancellation.

f. Promotional Activities. CUSTOMER agrees to perform its promotional activities related to the Event in accordance with all applicable Laws and FIU requirements posted at <https://reservespace.fiu.edu/terms-conditions/>, and in the least intrusive manner so as not to disturb the atmosphere of any FIU Location and the educational activities therein. Marketing of the Event may not begin until the reservation is confirmed and CUSTOMER has obtained all required permits and approvals. Furthermore, CUSTOMER represents and warrants to FIU that it has obtained any and all consents, and paid any required compensation, for the use of the name, likeness and image of any persons shown or featured in CUSTOMER's promotional materials for the Event or any merchandise or materials sold or distributed for or during the Event. CUSTOMER hereby indemnifies and holds FIU harmless from and against any and all claims, losses or expenses that may arise in connection with this provision. This Section shall survive the termination of this Agreement.

g. Permits. To the extent applicable, CUSTOMER must procure, at its own expense, all permits required in connection with the Event, including, but not limited to, permit(s) required by FIU. CUSTOMER shall ensure that all of its contractors, agents, or other representatives performing work on FIU's Premises are qualified, licensed, and insured in accordance with applicable Laws and FIU requirements. Upon FIU's request, CUSTOMER will provide copies of any such permits, licenses and/or insurance.

h. FIU Services. FIU shall not be responsible for providing any services, equipment, or any other items to CUSTOMER in connection with its use of the Premises, unless otherwise expressly set forth in the Confirmation. If an EVENT requires, or results in, excessive consumption of utilities, the provision of excess utilities shall be determined by FIU in its sole and absolute discretion. CUSTOMER is responsible for the cost of excessive consumption of utilities.

i. Copyrighted Materials. To the extent applicable, CUSTOMER, for itself and on behalf of the artist or promoter of the Event, represents and warrants to FIU that all copyrighted or trademarked programming to be presented has been duly licensed or authorized by the owners of all respective intellectual property or their representatives. CUSTOMER shall obtain, at its own expense, any licenses, and pay any royalties which CUSTOMER may owe for the sale or distribution of copyrighted or trademarked material at any activities contemplated under this Agreement. CUSTOMER hereby indemnifies and holds FIU harmless from and against any and all claims, losses or expenses that may arise in connection with this provision. The FIU Libraries offer general guidance on copyright laws, user responsibility and copyright infringement online at <http://library.fiu.edu/copyright>, without any representation or warranty on the part of FIU.

j. Filming.

- i. CUSTOMER agrees that no filming or photography of students, faculty, or staff will be done without specific written releases from such persons. To the extent applicable, CUSTOMER represents and warrants that it has or will obtain all required releases and agrees to indemnify FIU for its failure to obtain the required forms against any resulting claims, damages, and attorney's fees. Without limiting the foregoing, CUSTOMER further acknowledges, warrants and represents that no FIU student, faculty or staff filmed or photographed, as contemplated herein, shall be filmed or photographed wearing FIU gear or any FIU branding depicting the name, logos, marks, trademarks and/or likeness of FIU unless otherwise authorized in writing by FIU.
- ii. FIU agrees to provide CUSTOMER with a limited, non-exclusive license to use the photographic images of the Premises (the "FIU Intellectual Property") solely for the limited purpose of the filming expressly identified under this Agreement, subject to the subsection below and provided that the product of any such filming does not include FIU branding depicting the name, logos, marks, trademarks and/or likeness of FIU (including, but not limited to, any FIU branding depicting the name, logos, marks, trademarks and/or likeness of FIU on any clothing or other gear worn by individuals, if any, or on any other objects filmed as part of the filming contemplated herein). CUSTOMER agrees that all right, title, and interest in and to the FIU Intellectual Property is and shall remain the sole and exclusive property of FIU and that CUSTOMER shall acquire no rights therein by reason of this Agreement other than this limited non-exclusive license. CUSTOMER further agrees that it shall not portray or use the FIU Intellectual

Property in a negative, harmful or otherwise inappropriate manner, and will not display or otherwise associate the FIU Intellectual Property with content related to tobacco, alcohol, illegal drugs or sexually explicit material. CUSTOMER will not sell, display or otherwise use the FIU Intellectual Property in any manner except for the limited purpose stated herein. Additionally, CUSTOMER acknowledges, agrees and understands that this Agreement does not confer upon CUSTOMER any rights to use the name, logos, marks and/or likeness of FIU unless otherwise authorized in writing by FIU.

- iii. CUSTOMER acknowledges that many of the sculptures or other works of art located throughout FIU Locations are on loan to FIU and understands that FIU does not hold or own any copyrights related thereto. CUSTOMER agrees to obtain the advance written consent of the individual artist and/or copyright holder prior to filming, taping, recording or photographing any work of art exhibited on any FIU Location. CUSTOMER agrees to release, indemnify, and hold harmless FIU from and against any third-party claim relating to the unauthorized use, filming, taping, recording or photographing of any work of art located on any FIU Location.

6. **Parking at the Premises.** FIU reserves the right to provide and control all parking at FIU Locations required in connection with the Event. FIU may charge a parking fee to Event participants. All parking revenues and all parking rights shall belong to FIU. All CUSTOMER PARTIES must abide by FIU parking rules and regulations, including those prohibiting parking on the grass or in handicapped spaces without proper authorization. CUSTOMER recognizes that any special arrangements made for parking for the Event do not constitute a license or grant any permission to violate parking rules and regulations of FIU.
7. **Food Service.** FIU does not provide catering services or personnel to serve food, but has approved caterers for catering services on FIU Locations. CUSTOMER is required to adhere to FIU's guidance on the use of approved vendors as posted at <https://shop.fiu.edu/dining/catering/preferred>). CUSTOMER must notify FIU if it intends to use a caterer, and set-up and break-down times must be scheduled at the time of reservation. The service of food by CUSTOMER or CUSTOMER'S food service provider, including use of deep fryers and open flame cooking, if applicable, shall be subject to FIU's prior written approval (which, if granted by FIU, shall be evidenced by an express approval set forth in the Confirmation) and any requirements/conditions that may be set forth in the Confirmation. Self-catering may not be allowed on all premises. For information on food safety, please visit <https://ehs.fiu.edu/resources/index.html>.

If applicable, CUSTOMER shall comply, and shall cause its food service provider to comply, with all health and safety Laws pertaining to the service of food. CUSTOMER shall also be responsible for obtaining, or causing its food service provider to obtain, any and all required governmental documentation for same, including, but not limited to, licensing and permitting requirements, to the extent applicable.

Neither CUSTOMER nor CUSTOMER'S food service provider may advertise or directly market catering services or serve food or beverage for resale to the FIU community.

8. **Alcohol.** The possession, service, sale, consumption and distribution of alcohol in any FIU Location, including the Premises, is strictly governed by all appropriate state and federal laws,

local county ordinances, and FIU's regulation regarding alcoholic beverages. Alcohol in any FIU Location is subject to FIU's prior approval in its sole and absolute discretion. CUSTOMER must disclose the desire to bring alcohol to the Premises at the time of reservation (and CUSTOMER acknowledges that any Event booked less than two weeks prior to the scheduled date might not receive timely approval to bring alcohol to the Premises) and must file a valid copy of the occupational license and required liability insurance with FIU. Any CUSTOMER that has received approval to serve alcoholic beverages is recommended to use FIU's food service contractor. Food items and non-alcoholic beverages must be made available at the time of alcohol service. Alcohol must be served by a licensed bartender. Alcohol service must end one hour prior to the scheduled end of the Event. Alcoholic beverages may not be used in Event marketing, as prizes or awards. Responsible consumption of alcohol shall be encouraged, and publicity of an Event may not make reference to the availability of alcoholic beverages. Social events that encourage drinking, drinking contests, or alcoholic intoxication, and the advertisement of any such events are strictly prohibited. No individual under the legal drinking age (minimum of 21 years of age) may possess, serve, sell, consume or distribute alcohol on any FIU Location, and no individual on any FIU Location may serve or otherwise provide alcohol, for consumption, to individuals under the legal drinking age of 21 years. The foregoing is not an exhaustive list of requirements; please refer to FIU Regulation 2505 regarding alcoholic beverages at <http://regulations.fiu.edu> for additional terms and conditions, which are incorporated as if fully set forth herein. For information on how to obtain FIU's prior approval, please visit <https://reservespace.fiu.edu/terms-conditions/> and please refer to the Application for Service, Sale or Consumption of Alcoholic Beverages.

9. **Safety and Security.**

a. **Risk Review.** FIU reserves the right to require safety and security measures for the Event at the sole cost and expense of CUSTOMER.

b. **Security.** CUSTOMER is solely responsible for the security of all property, equipment, materials, and any other items that it or any CUSTOMER PARTIES bring onto the Premises. CUSTOMER shall also be solely responsible for the security of all CUSTOMER PARTIES on the Premises. FIU reserves the right, due to the nature or extent of CUSTOMER's activities, to require CUSTOMER to hire off-duty FIU police officers, at CUSTOMER's sole cost and expense, to ensure the orderly flow of pedestrians and traffic around the Premises and for public safety. In the event that CUSTOMER desires special security services or measures, the provisions of such services or measures shall be determined between CUSTOMER and the FIU Police Department and other FIU officials as deemed necessary by FIU in its sole and absolute discretion. CUSTOMER is responsible for the costs of such special security. CUSTOMER further agrees to evacuate the Premises promptly upon hearing a fire alarm and/or upon notice given by FIU in the event FIU deems it necessary for the protection and safety of the public. Without limiting any other obligation of CUSTOMER under this Agreement, CUSTOMER shall, and shall cause the CUSTOMER PARTIES to, strictly abide with FIU's policy regarding firearms and dangerous weapons, available at <https://policies.fiu.edu/files/32.pdf>.

c. **Hazardous Materials/Activities.** In no event shall CUSTOMER use or bring any hazardous materials, as defined by applicable Laws, on the Premises. Any Events contemplating the use of fireworks, blank-shots and similar types of pyrotechnic materials, capable of ignition in an FIU Location must be coordinated with the Department of Environmental Health & Safety and FIU's Police Department, and a valid permit issued by the local fire department is required. For more guidance on fireworks, see FIU's policy at <http://ehs.fiu.edu/Programs/General%20Safety/Pages/Policies.aspx>. CUSTOMER agrees that there will be no dangerous or hazardous activities

undertaken in or about the Premises, unless otherwise expressly permitted in writing by FIU as set forth in the Confirmation.

10. **Insurance.**

a. If CUSTOMER is an individual or a non-governmental entity, CUSTOMER shall provide FIU with proof of insurance sufficient to cover the operations and activities to be carried out on the Premises as set forth below. Throughout the Use Period, CUSTOMER shall maintain, at its sole expense, the following minimum insurance coverage: (i) commercial general liability insurance with minimum limits of \$1,000,000.00 per occurrence (including “damage to rented premises” with a minimum limit of \$500,000.00 each occurrence), (ii) workers compensation insurance as required by all applicable workers compensation laws and employer’s liability insurance with minimum limits of \$1,000,000.00 each accident/disease-each employee & policy limit, for its protection and the protection of FIU, and, only if applicable, (iii) liquor liability insurance with minimum limits of \$1,000,000.00 per occurrence in the event the CUSTOMER intends to serve and/or sell alcohol on the Premises. CUSTOMER may purchase the required insurance from FIU at the terms and rates then in effect from time to time. **The certificate shall indicate that the policy carries an endorsement (no more restrictive than ISO Form CG 20 10) which names Florida International University, The State of Florida, The Florida International University Board of Trustees, The Florida Board of Governors, and their respective trustees, directors, officers, agents, and employees as additional insureds.** CUSTOMER’s policy shall be primary and shall be issued in a form acceptable to FIU. CUSTOMER’s commercial general liability insurance shall be no more restrictive than that provided by the latest occurrence form edition of the standard commercial general liability coverage form (ISO form CG 00 01). Any insurance carried by FIU shall be non-contributing. The certificate shall contain a statement that the policy shall not be allowed to lapse or be canceled without notification to FIU at least thirty (30) days prior to the effective date of cancellation. CUSTOMER shall furnish to FIU proof of coverage no less than seven (7) days prior to the commencement of the Use Period.

Unless previously authorized by FIU, the policies required above shall be issued on a “first dollar” basis with no deductible or self-insured retention. In the event any of the policies are subject to a deductible or self-insured retention, it is the sole responsibility of CUSTOMER to pay such deductible or self-insured retention. FIU, upon request, reserves the right to obtain a copy of the policies required above at any time prior to, during and after the Use Period. The absence of a demand for any type of insurance certificates or policy shall not be construed as a waiver of CUSTOMER’s obligations to carry and maintain the appropriate insurances at limits that are appropriate to the liability exposure associated with the Agreement, and to ensure that its agents/subcontractors maintain appropriate insurance at all times. CUSTOMER shall assume all risk and responsibility for the actions of its contractors/subcontractors/agents/representatives on the Premises. FIU does not represent that coverage and the limits specified herein will necessarily be adequate to cover CUSTOMER liability.

b. If CUSTOMER is a public entity, CUSTOMER shall be a self-insured entity with a general and automobile liability risk management program, including the administration of general and automobile liability claims, settlement of claims, a loss control program and trust fund pursuant to Florida law. CUSTOMER agrees to maintain in full force and effect and throughout the Use Period, at CUSTOMER’s sole cost and expense, the insurance program

pursuant to Florida law. CUSTOMER shall provide FIU with proof of self-insurance no less than five (5) days prior to the commencement of the Use Period.

To the extent applicable, CUSTOMER shall ensure that its vendors/contractors/subcontractors/agents/representatives maintain, at the contractors/subcontractors/agents/representatives' sole expense, the following minimum insurance coverage: (i) commercial general liability insurance (on an occurrence form) which includes coverage for bodily injury, property damage, personal injury, products/completed operations, and contractual liability with minimum limits of \$1,000,000.00 per occurrence; and (ii) workers compensation insurance at the statutory limits and employer's liability of \$1,000,000.00 each accident/disease-each employee & policy limit, for its protection and the protection of FIU, and (iii) if applicable, liquor liability insurance with minimum limits of \$1,000,000.00 per occurrence. 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, and their respective trustees, directors, officers, agents and employees as additional insureds. The vendors/contractors/subcontractors/agents/representatives' 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 to FIU at least thirty (30) days prior to the effective date of cancellation. CUSTOMER shall assume all risk and responsibility for the actions of its vendors/contractors/subcontractors/agents/representatives on the Premises. FIU, upon request, reserves the right to obtain a copy of the policies required above at any time prior to, during and after the Use Period.

11. **Indemnification.** CUSTOMER shall indemnify, defend and hold harmless the State of Florida, the State of Florida Board of Trustees of the Internal Improvement Trust Fund, the Florida International University Board of Trustees, The Florida Board of Governors, and their respective trustees, directors, officers, agents, employees, contractors, and other representatives (collectively "Indemnitees") from and against any and all demands, claims, causes of action, fines, penalties, damages (including consequential damages), losses (including death), liabilities, judgments, and expenses (including, without limitation, attorneys' fees and court costs at all tribunal levels) arising directly or indirectly from: (a) the use or occupancy of the Premises by CUSTOMER or any person claiming under CUSTOMER; (b) any activity, work, or thing done or permitted by CUSTOMER in the Premises; (c) any acts, omissions, or negligence of CUSTOMER or any person claiming under CUSTOMER or and/or any of the other CUSTOMER PARTIES or any such person; (d) any breach, violation, or nonperformance by CUSTOMER or any person claiming under CUSTOMER or the CUSTOMER PARTIES or any such person of any term, covenant, or provision of this Agreement or any law, ordinance, or governmental requirement of any kind; (e) any injury or damage to the person, property, or business of CUSTOMER, the CUSTOMER PARTIES, and/or any other person entering upon the Premises under the express or implied invitation of CUSTOMER; and/or (f) any, claims losses, or expenses that arise in connection with the cancellation of the Event due to force majeure events or otherwise.

Nothing in this Agreement shall be deemed to affect the rights, privileges, and immunities of Indemnitees as are provided for by law. Nothing in this Agreement shall be construed as a waiver of sovereign immunity beyond that provided in Florida Statutes §768.28.

CUSTOMER expressly waives any and all claims of whatever nature, for any and all loss or damage sustained for any cause whatever, prior, during or subsequent to the Use Period, by reason of any defect, deficiency, failure or impairment of the Premises, including, but not limited to, the water supply system, air conditioning system, heating system, wires leading to or inside the Premises, gas, electric or telephone systems, or from any source whatsoever. FIU is not liable or responsible for any financial loss incurred by CUSTOMER due to unforeseen, extenuating or reasonably uncontrollable events, which cause failure of any or all of the facilities to operate or function prior, during or subsequent to the Use Period. This Section shall survive the termination of this Agreement.

12. **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 seven (7) 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 CUSTOMER is the defaulting party, all deposits, payments, advances, or other compensation paid by CUSTOMER to FIU shall be forfeited and become the property of FIU. Notwithstanding any provision herein to the contrary, CUSTOMER's failure to make any payments due under this Agreement by the respective due dates 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. In no event shall FIU be liable to CUSTOMER for any consequential, incidental, special and/or indirect damages or losses (in contract or tort), including, but not limited to, any lost revenues or savings in connection with this Agreement and/or any breach and/or default by FIU hereunder.
13. **Termination.** FIU shall have the right to terminate this Agreement for any reason whatsoever, in FIU's sole and absolute discretion, upon providing CUSTOMER with prior written notice (and FIU will endeavor to provide thirty (30) days prior written notice of termination) (an "FIU Discretionary Termination"). In the event of an FIU Discretionary Termination, provided that CUSTOMER is not in default hereunder as set forth in Section 12 above, FIU shall reimburse CUSTOMER for any payments previously paid by CUSTOMER to FIU. Additionally, this Agreement may be unilaterally canceled by FIU for refusal by CUSTOMER to allow public access to all documents, papers, letters or other materials subject to the provisions of Chapter 119, Florida Statutes (Florida's Public Records law), and made or received by CUSTOMER in conjunction with this Agreement. Without limiting the foregoing, if CUSTOMER willfully and/or repeatedly breaches the terms and conditions of this Agreement, in addition to FIU's rights under Sections 12 and 13 of this Agreement, FIU reserves the right in its sole and absolute discretion to cancel any other existing reservations and to deny subsequent reservation requests. FIU shall have no liability to CUSTOMER for any such cancellation or termination of the Agreement or otherwise.
14. **ADA/Non-Discrimination.** CUSTOMER understands that FIU, in providing the Premises, does not act as the presenter or promoter of the Event. CUSTOMER shall be solely responsible for ensuring that any special assistive or other accommodations are provided for its disabled guests, invitees and employees of the Event, such as the provision of interpreters, attendants, and the like. In no event shall FIU be required to incur any costs or expenses needed to adapt the Premises for the intended use of the Event. CUSTOMER agrees to indemnify and hold FIU harmless from and against any and all liability, fines, suits, claims, demands and actions, costs, attorneys' fees and

expenses of any kind or nature whatsoever for any damages incurred, whether economic, punitive, compensatory or otherwise which may arise in connection with (i) CUSTOMER's failure to reasonably accommodate any disabled individual who is a guest, invitee, or employee at its Event on the Premises and from and against any orders, judgments or decrees which may be entered pursuant thereto and/or (ii) CUSTOMER changing the layout of the Premises, which layout as provided by FIU is in compliance with applicable Laws regarding the needs of people with disabilities, and not restoring said compliant layout to the same condition after termination of the Event. Further, CUSTOMER represents and warrants to FIU that CUSTOMER does not and will not engage in discriminatory practices and that there shall be no discrimination in connection with CUSTOMER's use of the Premises or presentation of the Event on account of race, color, sex, religion, age, handicap or marital status. CUSTOMER 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.

15. Miscellaneous.

- a. No Assignment. Neither party may assign this Agreement without the prior written consent of the other party, which may be withheld by the other party in its sole discretion.
- b. Binding Effect. This Agreement shall be binding upon and inure to the benefit of the parties hereto.
- c. Severability. If any provision or application thereto to any circumstance is held to be invalid or unenforceable, such provision shall be ineffective and the remainder of this Agreement shall remain valid and enforceable.
- d. Governing Law/Venue. This Agreement is governed by the laws of State of Florida. Exclusive jurisdiction and venue of any actions arising out of this Agreement shall be in Miami-Dade County, Florida.
- e. Waiver. The waiver by either party of a breach or a violation of any provision of this Agreement shall not operate as or be construed to be a waiver of any subsequent breach.
- f. Survival. Any provision of this Agreement providing for performance by either party after termination of this Agreement shall survive such termination and continue to be effective and enforceable.
- g. Entire Agreement/Amendments. This Agreement constitutes the entire agreement between the parties related to the subject matter hereof and supersedes any prior understandings. This Agreement may be amended only by written amendments duly executed by the parties.
- h. Acceptance. CUSTOMER acknowledges and agrees that payment of any portion of the Use Fee evidences CUSTOMER'S acceptance of the terms and conditions of this Agreement. Tendering of a purchase order is not a substitute for payment of the Use Fee.
- i. Force Majeure. FIU does not guarantee the uninterrupted use of facilities (including the Premises) in the event that the use of facilities is suspended or delayed by reason of fire, storm, explosion, strike, lockout, labor dispute, casualty, accident, lack or failure of sources of supply or labor, interruption of utilities, fuel supply, acts of God or of the public enemy, hurricane or natural disaster, hurricane warning or hurricane watch issued by the US National Weather Service, tropical storm watch or tropical storm

warning issued by the US National Service, 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 FIU's control, or for emergency inspection, cleaning, repairs, replacements, alterations or renewals which are, in FIU's reasonable judgment, necessary to be made.

- j. Taxes. CUSTOMER acknowledges sole responsibility for the payment of all applicable federal, state, and local taxes and fees of whatever nature that are associated with the use of the Premises.
- k. Third Party Beneficiaries. Except as specifically set forth herein, this Agreement does not and is not intended to confer any rights or remedies upon any person other than FIU and CUSTOMER.
- l. Employment or Use of FIU Students in connection with Proposed Use of Premises. CUSTOMER must obtain FIU's written approval prior to using or employing any FIU student in connection with CUSTOMER's use of the Premises, if applicable.
- m. FIU Logo/Marks. This Agreement does not confer upon CUSTOMER any rights to use the name, logos, marks and/or likeness of FIU. CUSTOMER must obtain FIU's written permission prior to using the name, logos, marks and/or likeness of FIU from the Division of External Relations. For more information on the use of FIU's logo/marks, please refer to <https://fiu.edu/brand>.
- n. No Joint Venture. FIU's sole role in this matter is to authorize CUSTOMER to use the Premises for the purposes provided herein. This is not a joint venture between FIU and CUSTOMER. CUSTOMER shall be solely responsible for conducting its Event and for supervising the CUSTOMER PARTIES at all times.
- o. Independent Contractor. CUSTOMER is an independent contractor, and neither CUSTOMER nor CUSTOMER PARTIES shall be considered FIU employees, contractors, agents or representatives.
- p. Conflict of Interest. CUSTOMER represents that it has no employee who has, or whose relative has, a relationship with FIU, in a manner that will violate the Code of Ethics for Public Officers and Employees located at <https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=2&ved=0ahUK Ewi1gfq2kITWAhVGTcyKHafOAYQQFggUuMAE&url=http%3A%2F%2Fwww.ethics.state.fl.us%2FDocuments%2FPublications%2FGuideBookletInternet.pdf&usg=AFQjCNEvOyGRNTvbuin6UE1wQVwe9Rji2A>, including, but not limited to, Florida Statute, Sections 112.313(3) and (7), and Florida Statute, Section 112.3185(6), thereof, by reason of CUSTOMER entering into this Agreement.
- q. Radon Gas Disclosure. RADON Gas: Radon is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of radon that exceed federal and state guidelines have been found in buildings in Florida. Additional information regarding radon and radon testing may be obtained from your county health department.
- r. Availability of Funds. FIU's performance and obligation to pay under this Agreement, to the extent applicable, is contingent upon an annual appropriation by the Florida Legislature.
- s. Notice. Whenever this Agreement requires or permits any notice by one party to the other, such notice shall be written and sent (i) to the address set forth in the Confirmation if such notice is operational in nature or (ii) to Office of General Counsel,

11200 S.W. 8th Street, PC 511, Miami, Florida 33199 if such notice is legal in nature, as applicable, by any of the following means: (a) commercial overnight or next business day guaranteed courier service, (b) certified United States Mail, return receipt requested, (c) hand delivery, or (d) via email transmission with confirmed receipt (to the email address set forth in the Confirmation if the notice is operational in nature or to generalc@fiu.edu if the notice is legal in nature). Notices (and reservation estimates and receipts) shall be deemed received upon delivery by commercial overnight or courier service or hand delivery, refusal of delivery, 5 business days after being deposited in the United States mail, return receipt requested, or confirmation of receipt of an email transmission, as applicable.

16. **Exclusives.** FIU has certain exclusive relationships with third parties which may affect use of the Premises, including: (1) Pepsi as FIU's exclusive beverage provider of carbonated and non-carbonated soft drinks, fruit juices and drinks, sports drinks, protein drinks, energy drinks, coconut-water based drinks, milk-based drinks, pre-packaged protein drinks, ready-to-drink tea and coffee products, packaged water, enhanced water, and flavored water; (2) Barnes & Noble as FIU's exclusive seller on-campus of items typically sold in college bookstores, such as books, educational supplies, stationery, desk accessories; and (3) Herff Jones as FIU's exclusive supplier of FIU class rings and commencement merchandise. Accordingly, no CUSTOMER PARTY may sell, promote or market any items which may conflict with these exclusive relationships. Additionally, CUSTOMER may not provide those excluded services outlined in **Exhibit A** attached hereto and herein incorporated. Any use of the Premises in contradiction of these terms shall be prohibited and may be cause for FIU's termination of this Agreement and/or removal of those items in violation of these terms, as determined by FIU in its sole and absolute discretion.

17. **Additional Requirements for Minor Participants.** As a condition of having the Event at FIU and using the Premises, CUSTOMER agrees to comply with the following additional requirements as it relates to minor participants (i.e., those who are under the age of 18 years) under its supervision while on the Premises:
 - a. **Criminal Background Checks Requirement.** CUSTOMER agrees that it will ensure that a Level II criminal background check pursuant to Florida Statutes, Section 435.04, has been conducted for all of its employees, agents, representatives, and/or volunteers who will be interacting or may interact with the minor children. CUSTOMER further agrees that it will not allow anyone convicted of a sexual offense to be employed or volunteer in any capacity for this Event. CUSTOMER represents and warrants that all the CUSTOMER's employees, agents, representatives, and/or volunteers involved in the Event have undergone the requisite screenings described in this paragraph or will be screened prior to the start of the Event and CUSTOMER indemnifies and holds FIU harmless from and against any and all claims, losses or expenses that may arise in connection with the foregoing.
 - b. **Medical Insurance.** CUSTOMER agrees to obtain proof of valid and current medical insurance coverage on behalf of every minor participant prior to the start of the Event. CUSTOMER represents and warrants that it will obtain such insurance required coverage prior to the start of the Event.
 - c. **Medical Authorization.** CUSTOMER agrees to obtain a signed Medical Authorization in a form the same or substantially the same as the form located at <https://generalcounsel.fiu.edu/wp-content/uploads/sites/26/2018/07/Medical-Authorization-Form-for-Minors.pdf> on behalf of every minor participant. CUSTOMER

represents and warrants that it has or will obtain a signed Medical Authorization on behalf of each minor participant before the start of the Event. CUSTOMER agrees to provide FIU with fully executed Medical Authorization forms within a reasonable time when requested by FIU. CUSTOMER indemnifies FIU and agrees to be responsible for any costs that FIU may incur for medical treatment sustained during the Event if CUSTOMER fails to obtain a valid Medical Authorization form.

- d. **Release, Waiver of Liability and Assumption of Risk Forms for Minor Participants.** CUSTOMER agrees to obtain fully executed Release, Waiver of Liability and Assumption of Risk forms releasing FIU from all liability related to minors participating in the Event. The Release, Waiver of Liability and Assumption of Risk form for parents to sign on behalf of minors participating in the Event is located at <https://generalcounsel.fiu.edu/wp-content/uploads/sites/26/2018/07/Release-Waiver-of-Liability-and-Assumption-of-Risk-Minors-External.pdf>. The Release, Waiver of Liability and Assumption of Risk form for minors must be fully executed by their lawful parent(s)/guardian(s). CUSTOMER represents and warrants that it has or will obtain all required Release, Waiver of Liability and Assumption of Risk forms for minor participants prior to the start of the Event. CUSTOMER indemnifies FIU for its failure to obtain the required forms against any resulting claims, damages, and attorney's fees.
- e. **Safety & Security Procedures.** CUSTOMER warrants and represents that it has an emergency/crisis response plan appropriate for the Event's operations, that CUSTOMER has procedures in place for addressing the safety and security of the Event participants (in general and as required of the specifics of its Event), and that CUSTOMER will ensure that the Event staff/volunteers adhere to the foregoing procedures, including, but not limited to, the following (which does not constitute an exhaustive list):
- i. Having activities planned for Event participants be age and developmentally appropriate;
 - ii. If the Event is a sport camp of any type, clinic, and/or tournament, obtaining the prior written approval from the FIU Director of the Athletics Compliance Office (ACO). In order to obtain approval from the ACO, CUSTOMER agrees to meet the following conditions:
 1. An ACO Event Brochure Form must be submitted to and approved by the ACO prior to any Event brochure being printed and/or distributed;
 2. An ACO Event Advertisement Approval Form must be submitted to and approved by the ACO prior to any advertisement of the Event; and
 3. An ACO Athletics Compliance Audit must be completed for each Event and must be submitted to the ACO no later than ten (10) business days after completion of the Event.
 - iii. Ensuring that the Event participants will not be exposed to any hazardous materials or conditions;
 - iv. Having protocols to avoid or to address any potential food allergy issues;
 - v. Providing reasonable medical care and attention appropriate to the ages of the Event participants, the physical activity in which the Event participants are engaged, and the physical environment in which the activity occurs (e.g., addressing heat strokes, concussions);
 - vi. Having a plan for transporting injured Event participants to the nearest hospital or other appropriate medical facility in the event of a medical emergency;
 - vii. Having the appropriate number of staff/volunteers to Event participant ratio to ensure the safety of the Event participants based on the Event requirements (see

the American Camp Association for suggested staff-to-minor participant ratios: <http://www.acacamps.org/resource-library/accreditation-standards/aca-standards-relate-staff-screening-supervision-training>);

- viii. Ensuring that, at no time during the Event, will CUSTOMER permit the staff/volunteers to be alone with a single Event participant where the staff/volunteers cannot be observed by others;
- ix. Ensuring that Event participants will not be left unsupervised, including during the time of drop off or pick up for the Event;
- x. Ensuring that, under no circumstances, will the staff/volunteers release Event participants to anyone other than the authorized parent, guardian or other adult authorized by the parent or guardian;
- xi. Ensuring that the staff/volunteers shall not abuse or mistreat Event participants in any way, including, but not limited to, physical abuse (e.g., striking, spanking, shaking, slapping); verbal abuse (e.g., humiliating, degrading, threatening); sexual abuse (e.g., touching or speaking inappropriately or showing Event participants inappropriate materials); mental abuse (e.g., shaming, withholding kindness, being cruel, belittling); and/or neglect (e.g., withholding food, water, or basic care);
- xii. Having a process and procedure to deal with potential bullying and hazing issues;
- xiii. Ensuring that the staff/volunteers engage only in appropriate touching necessary for the Event activities and relative to the Event participants' ages;
- xiv. Ensuring that the staff/volunteers have appropriate protocols in place for bathroom usage (e.g., making sure that a restroom is not occupied by suspicious or unknown individuals before allowing Event participants to use the facilities; with respect to younger Event participants, sending Event participants in threes and, whenever possible, with at least two staff/volunteers of the same gender);
- xv. Having an evacuation plan in the event of an emergency, such as inclement weather, fire, etc.;
- xvi. Ensuring that all dive, boat and/or other water sport-related activities that take place in the ocean and/or other large bodies of water are reviewed, approved and supervised by the FIU Dive and Boat Safety Team;
- xvii. Refraining from taking photographs and/or videos of the Event participants (including through the use of cell phones) and/or from posting any photographs and/or videos on social media without prior written approval from the Event participant's lawful parent/guardian; and
- xviii. Ensuring that the staff/volunteers adhere to the Florida mandatory child abuse reporting requirements as set forth in Florida Statutes Section 39.201 and are familiar with the definitions of abuse as set forth in Florida Statutes.

EXHIBIT A

FIU SALES RESTRICTIONS

CUSTOMER may not sell (or operate) the following in the Premises:

- Guns, firearms, explosives or related products;
- Alcoholic spirits and/or beverages (excludes beer, malt beverages with an alcohol content of no more than 6.243% by volume or 5% by weight, still wine and sparkling wine);
- Any tobacco or tobacco-related products;
- Pornographic, obscene, or profane materials;
- An adult entertainment bar or club;
- Pari-mutuel betting facility, casino or other gambling operations (excludes state lottery);
- Educational textbooks including new, used rental or e-book formats and related educational supplies, notebooks, stationery, desk accessories, class rings and jewelry;
- Beverage and snack vending machines;
- Food services (*i.e.*, restaurants, coffee shops. etc.) that serve prepared hot and/or cold food;
- Medical services, specifically including but not limited to urgent care medical services, minute clinics and/or physicians;
- Banking services to students, faculty and staff, including but not limited to checking accounts, loans, and related branch banking services;
- Credit cards offers or affiliations to students; and
- Beverages outside of those included in FIU's core list of beverages, as defined in its Pepsi Pouring and Vending Contract.*

* Pepsi is the exclusive provider of Core Beverages sold, promoted and marketed on FIU campuses. Core Beverages include the following categories: carbonated and non-carbonated soft drinks; 100% shelf-stable fruit juices (e.g., Dole and Ocean Spray) and juice drinks (less than 100% fruit juice); sports drinks, pre-packaged value-added protein drinks (e.g., Muscle Milk); energy drinks; coconut water-based drinks; milk-based drinks which contain less than 50% milk; pre-packaged protein drinks; ready-to-drink tea; ready-to-drink coffee products; packaged water; enhanced water; and flavored water. Note, this exclusivity does not extend to milk, dairy and yogurt drinks, specialty name branded flavored milk (*i.e.*, 2% skimmed, chocolate milk and flavored milk), or hot beverage items (*i.e.*, hot teas, hot coffee, hot soups and specialty flavored hot coffee type offerings).

Pepsi has exclusive marketing rights with regards to the above categories of Core Beverages sold on FIU campuses. Therefore, only Pepsi's Core Beverages may be marketed, promoted, or given away on FIU campuses. Further, only Pepsi is allowed to represent that Pepsi, or any of Pepsi's Core Beverages, is "the beverage sponsor of FIU," "the exclusive drink of FIU," "A proud sponsor of FIU," "the Official drink of FIU," or be permitted by FIU to use any other similar phrase or representation.