

FLORIDA INTERNATIONAL UNIVERSITY

TERMS AND CONDITIONS

TEAM ROPES ADVENTURE CHALLENGE

Please be certain to print a copy for your records

1. **TRAC.** Subject to these terms and conditions and any additional terms and conditions set forth in the Confirmation (collectively, the "Agreement"), CUSTOMER is granted limited access to and the right to participate in the ropes course owned by Florida International University ("FIU" or the "University") and to have its guests, employees, contractors, agents and attendees (collectively, "CUSTOMER PARTIES") participate in the Team Ropes Adventure Challenge ("TRAC") offered to be held on the date set forth in the Confirmation and all activities related thereto (the "Program").

2. **Participants.** Groups of less than twelve (12) participants may schedule the Program, but any group that has less than twelve (12) participants will still be required to pay for twelve (12) participants. CUSTOMER shall provide an accurate count of participants at least 24 hours prior to the start of the Program. FIU does not provide refunds for overpayment or no-shows. CUSTOMER acknowledges and agrees that an accurate count of participants is necessary for FIU to staff the Program adequately.

3. **Compensation.** Full payment for the Program shall be made prior to the date of the Program. FIU may, in its sole and absolute discretion, accept payment on a deferred schedule. If approval is once given by FIU to a deferred payment schedule, FIU shall not be barred from subsequently refusing to approve any further deferred payments. Payment may be made by check, money order or credit card. No cash will be accepted. FIU may require payment of a deposit (the "Deposit") for the Program, in which event (i) CUSTOMER will receive a reservation estimate, (ii) CUSTOMER shall have five (5) business days from receipt of the reservation estimate to tender the Deposit, and (iii) the Deposit is nonrefundable except as otherwise expressly provided in this Agreement. 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 TRAC, to charge an administrative late charge equal to five percent (5%) of the amount of the delinquent payment, to immediately terminate this Agreement, and/or to refuse future reservations, as applicable.

4. **General Conditions of Use.** CUSTOMER agrees that CUSTOMER shall, and shall cause CUSTOMER PARTIES to, comply with each of the following terms and conditions during use of the ropes course and throughout the Program:

a. **Proper Use and Care.** CUSTOMER is responsible for the proper use and care of any FIU property, including, but not limited to, the FIU ropes course area. CUSTOMER is responsible for leaving the ropes course area as they found it, clean from debris, or additional charges may result.

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

c. **Compliance with Laws.** CUSTOMER PARTIES shall abide by all applicable laws, rules and regulations and FIU policies, procedures, rules and regulations, including those related to parking (collectively, the "Laws") and shall comply with all regulations and instructions of FIU for participation in the ropes course. CUSTOMER understands that FIU regulations, policies and/or procedures can be viewed on FIU's website at <https://reservespace.fiu.edu/policies-procedures/>. Without limiting any other provision herein, FIU may cancel this Agreement at any time if FIU determines, in its sole discretion, that any actions by any of the CUSTOMER PARTIES constitutes a violation of any Laws and FIU shall not be subject to any liability for said cancellation.

d. **Promotional Activities.** CUSTOMER agrees to perform its promotional activities related to the Program in accordance with all applicable Laws and FIU requirements, and in the least intrusive manner so as not to disturb the atmosphere of the campus and the educational activities therein. Marketing of the Program may not begin until the reservation is confirmed. 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 Program or any merchandise or materials sold or distributed for or during the Program. 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.

5. **Parking.** FIU reserves the right to provide and control all parking at FIU locations. FIU may charge a parking fee to CUSTOMER PARTIES. 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 Program do not constitute a license or grant any permission to violate parking rules and regulations of FIU.

6. **Food Service.** CUSTOMER may bring its own meals or order catered meals through FIU. All orders for catered meals shall be paid in full prior to the start of the Program or shall be guaranteed with a credit card. FIU does not provide refunds for overpayment or no-shows. FIU will not be liable for any illness resulting from provision of meals served at the Program.

7. **Alcohol.** The possession, service, sale, consumption and distribution of alcohol in the ropes course area by any CUSTOMER PARTIES is strictly prohibited.

8. **Safety and 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 ropes course area. CUSTOMER further agrees to evacuate promptly 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>.

9. **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) injury, death, loss or damage to any persons or property in connection with the Program or the presence of the CUSTOMER PARTIES in the ropes course area or any other part of FIU's campus; b) any activity, work, or thing done or permitted by CUSTOMER in the ropes course area; (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 claims losses, or expenses that arise in connection with the modification or cancellation of the Program due to force majeure events or otherwise; and/or (f) any liability and/or claims associated with medical care and or related transportation for any CUSTOMER PARTY. 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. 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. This Section shall survive the termination of this Agreement.

10. **Cancellations.** All cancellations by CUSTOMER must be done at least 24 hours prior to the start of the Program. CUSTOMER shall remain responsible for all charges due hereunder if CUSTOMER provides less than the required notice. Notwithstanding the foregoing, if inclement weather is expected on the day of the Program, CUSTOMER may reschedule the Program upon two (2) days advance notice (and refer to Section 11 for additional terms). If CUSTOMER willfully and/or repeatedly breaches the terms and conditions 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.

11. **Miscellaneous.** This Agreement is not assignable. 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. 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. The waiver by FIU 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 thereof. 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 approved by FIU. 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 (<https://fiu.edu/brand>). 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 TRAC. Neither CUSTOMER nor CUSTOMER PARTIES shall be considered FIU employees, contractors, agents or representatives. CUSTOMER acknowledges and agrees that payment of a Deposit or full payment for the Program evidences CUSTOMER'S acceptance of the terms and conditions of this Agreement.

12. **Force Majeure.** FIU does not guarantee the uninterrupted use of facilities 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. In the event of inclement weather on the day of the Program, FIU will make a decision, in FIU's discretion, on how or if the Program will occur or continue on such day. FIU may move the Program indoors to a campus meeting facility for the duration of the weather episode. FIU will not offer a refund to groups that encounter inclement weather the day of the Program, but FIU will take all commercially reasonable efforts to complete the Program in its entirety as noted herein.

13. **Release and Assumption of Risk Form.** CUSTOMER represents and warrants that it has or will obtain a Release and Assumption of Risk form in the form located at <https://generalcounsel.fiu.edu/wp-content/uploads/sites/26/2018/08/Release-Waiver-of-Liability-and-Assumption-of-Risk-for-the-Ropes-Course-at-BBC-TRAC-Adults-Minors.pdf> for each participant before the start of the Program, and will provide same to FIU. CUSTOMER indemnifies FIU for its failure to obtain the required forms against any resulting claims, damages, and attorney's fees, and this indemnification shall survive the termination of this Agreement.

14. **Additional Requirements for Minor Participants.** As a condition of having the Program at FIU and using the ropes course area, 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 ropes course area:

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 Program. CUSTOMER represents and warrants that all the CUSTOMER's employees, agents, representatives, and/or volunteers involved in the Program have undergone the requisite screenings described in this paragraph or will be screened prior to the start of the Program 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 (and this indemnification shall survive the termination of this Agreement).

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 Program. CUSTOMER represents and warrants that it will obtain such insurance required coverage prior to the start of the Program.

c. **Medical Authorization.** CUSTOMER agrees to obtain a signed Medical Authorization in the form located at <https://generalcounsel.fiu.edu/wp-content/uploads/sites/26/2018/08/Medical-Authorization-for-the-Ropes-Course-at-BBC-TRAC-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 Program. 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 Program if CUSTOMER fails to obtain a valid Medical Authorization form (and this indemnification shall survive the termination of this Agreement).

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 Program in the form located at <https://generalcounsel.fiu.edu/wp-content/uploads/sites/26/2018/08/Release-Waiver-of-Liability-and-Assumption-of-Risk-for-the-Ropes-Course-at-BBC-TRAC-Adults-Minors.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 Program. CUSTOMER indemnifies FIU for its failure to obtain the required forms against any resulting claims, damages, and attorney's fees (and this indemnification shall survive the termination of this Agreement).

e. **Safety & Security Procedures.** CUSTOMER warrants and represents that it has an emergency/crisis response plan appropriate for the Program's operations, that CUSTOMER has procedures in place for addressing the safety and security of the Program participants (in general and as required of the specifics of its Program), and that CUSTOMER will ensure that the Program 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 Program participants be age and developmentally appropriate;

- ii. If the Program 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:
 - a. An ACO Program Brochure Form must be submitted to and approved by the ACO prior to any Program brochure being printed and/or distributed;
 - b. An ACO Program Advertisement Approval Form must be submitted to and approved by the ACO prior to any advertisement of the Program; and
 - c. An ACO Athletics Compliance Audit must be completed for each Program and must be submitted to the ACO no later than ten (10) business days after completion of the Program.
- iii. Ensuring that the Program 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 Program participants, the physical activity in which the Program 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 Program 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 Program participant ratio to ensure the safety of the Program participants based on the Program 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 Program, will CUSTOMER permit the staff/volunteers to be alone with a single Program participant where the staff/volunteers cannot be observed by others;
- ix. Ensuring that Program participants will not be left unsupervised, including during the time of drop off or pick up for the Program;
- x. Ensuring that, under no circumstances, will the staff/volunteers release Program 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 Program 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 Program 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 Program activities and relative to the Program 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 Program participants to use the facilities; with respect to younger Program

- participants, sending Program 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 Program 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 Program 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.