

<<THIS TEMPLATE IS TO BE USED FOR EVENTS AT THE AGRICULTURAL HERITAGE CENTER. NOTE THAT THE LICENSEE MUST BE A LEGAL ENTITY (INDIVIDUAL OR INCORPORATED ENTITY, E.G., CORPORATION, LLC, ETC.)>>

**USE LICENSE AGREEMENT**

**THIS USE LICENSE AGREEMENT** (together with the Exhibits attached hereto, the “*Agreement*”) is dated as of , 202 (“*Effective Date*”), by and between Utah State University (“*USU*”), and the following “*Licensee*”:

Licensee Name:			
Licensee Address:			
Licensee Tax ID Number:	<<INSERT IF NEEDED, “Not applicable” IF NOT NEEDED>>		
Licensee Tax Exempt Number:	<<INSERT IF NEEDED, “Not applicable” IF NOT NEEDED>>		
Contact Name:	IF THE LICENSEE IS AN INDIVIDUAL, THEN STATE “Same as Licensee.”>>		
Contact Email:		Contact Phone:	

USU and Licensee each may be referred to herein as a “*Party*” or collectively as the “*Parties*.”

**BACKGROUND**

USU is the owner of the Utah State University Agricultural Heritage Center (“*Facility*”), located at 676 South 50 West, Kaysville, Utah. The Facility encompasses various agricultural and equestrian facilities including, for example, outside arenas, a covered arena, covered horse stalls, and other related facilities. Licensee desires to use a portion of the Facility, as set forth below, for the purposes stated herein and USU desires to grant to Licensee, and Licensee hereby accepts from USU, a license to use certain areas of the Facility in accordance with the terms and conditions set forth herein.

**NOW, THEREFORE**, in consideration of the mutual covenants and obligations set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

1. **Use of the Facility.**

- (a) Authorized Area(s). USU hereby grants to Licensee, upon the terms and conditions hereinafter expressed, a license to use those areas of the Facility described on **Exhibit A** attached hereto (the “*Authorized Areas*”), including all improvements, furniture, fixtures, easements, rights of ingress and egress, and appurtenances thereto, during the dates and times set forth on **Exhibit A** and for the purpose set forth in Section 2(a) (each such date and time, an “*Event*”).
- (b) Adjustments. If Licensee desires to use the Authorized Areas or any other portion of the Facility at any time other than during the dates and times delineated on **Exhibit A**, Licensee shall request from USU prior written permission to use such areas of the Facility. In the event such permission is granted, Licensee shall pay as an additional fee an amount equal to the sum of USU’s actual costs for performing its obligations under this Agreement during the date(s) and time(s) requested, and a fee in

an amount determined by USU to represent a fair value for use of such additional areas of the Facility during such date(s) and time(s).

- (c) Vacate. Licensee's failure to vacate the Authorized Areas upon the completion of the time of use shall constitute a material default hereunder in addition to other defaults identified herein. If Licensee fails to vacate the Authorized Areas of the Facility upon completion of the time of use, Licensee shall pay USU the greater of: (a) USU's daily use rate of the space not vacated as such space is identified in **Exhibit A** attached hereto; or (b) the amount of actual damages incurred by USU due to Licensee's failure to vacate the Authorized Areas upon completion of the time of use.
- (d) Third-Party Contractors. Licensee acknowledges that, in connection with USU's management and operation of the Facility, USU utilizes the services of certain third-party independent contractors ("*Third-Party Contractors*"). Licensee hereby agrees that USU shall not be responsible in any way for the acts and/or omissions of any one or all of the Third-Party Contractors.
- (e) Plans and Descriptions.
  - (i) At least four (4) weeks prior to the first Event, Licensee shall provide to USU, for USU review and approval (i) a full and complete description of all set-up (including, without limitation, any staging, lighting, video boards, and/or rigging from or to the physical structure of the Facility or any fixture thereto required for the Event), electrical, communications systems, and plumbing work anticipated to be needed for the Event, and (ii) an operations plan laying out operations and personnel requirements associated with the Event. Licensee shall update these plans from time-to-time as may be necessary or appropriate to address any changes in operating conditions. USU reserves the right in its sole discretion to accept the plans, or request modifications to ensure compliance with event rules imposed by USU and all other applicable laws, regulations, codes, ordinances, orders, or similar requirements.
  - (ii) At least eight (8) weeks prior to the first Event, Licensee shall provide to USU a full and complete plan for aspects of the Event requiring fire marshal/fire department approval, and if requested, furnish a description of all electrical, communications systems, and plumbing work anticipated to be needed for the Event. Based upon a review by USU and such Fire Marshall (as applicable) of the foregoing materials, USU may request Licensee, by written notice within ten (10) days after receiving the materials, to make such changes, deletions, and/or additions as USU may, in its reasonable discretion, deem necessary or desirable. Failure by Licensee to make any such reasonable changes, deletions, or additions within seven (7) days after receipt of written notice thereof shall constitute a breach of this Agreement.
  - (iii) Licensee shall be solely liable for all losses arising from Licensee's failure to deliver to USU the materials described in Subsections (i) and (ii) of this Section 1(e) within the specified time periods, including, without limitation, overtime pay and short-notice delivery fees.
- (f) Stalls. If the Authorized Areas include horse stalls ("*Stalls*") in one or more Facility barns (*i.e.*, Stall Barn A or Stall Barn B, each a "*Barn*"), then: (i) Licensee shall be responsible to assign Stalls to Stall users and to mediate and resolve disputes among Stall users for their specific needs or desires; and (ii) Licensee shall cooperate with USU in auditing and reconciling the Stall usage during and

immediately after the Event. USU may assign specific Stalls to Licensee if more than one equestrian event needs stalls and contracted over the same weekend. Licensee acknowledges that USU provides boarding of horses at the Facility to other licensees, which boarding may be in use during the Event. Nothing contained in this Agreement shall authorize Licensee to use stalls and other Facility amenities that have been licensed to those other licensees.

- (g) Shavings. No outside shavings may be brought into the Facility for overnight stall use. All shavings must be purchased through the Facility.
- (h) Conduct. Licensee shall conduct business in the Facility in a dignified and orderly manner with full regard for public safety and in conformity with USU's Facility Rules and Regulations and all federal, state, local, and municipal regulations, ordinances, statutes, rules, laws, constitutional provisions, and common laws (collectively, the "Laws") applicable to Licensee's performance of this Agreement and/or activities at the Facility, including application noise ordinances and fire and safety rules as required by USU and/or local fire regulations. USU may monitor Licensee's compliance with all applicable Laws. Licensee's failure to comply can result in immediate termination of the Event by USU and citations from both the responsible governmental agency. Licensee will remove any person associated with the Event that USU identifies for violating USU's Facility Rules and Regulations or the Laws.

2. **Purpose.** The Facility is to be used by Licensee solely for the purpose set forth in **Exhibit A**. Licensee shall not use the Facility or permit the Facility to be used by any of its officers, directors, agents, employees, licensees, or invitees, for any unlawful or inappropriate purpose, the determination of which shall be in the sole discretion of USU, or in any manner to injure persons or property in, on, or near the Facility.

3. **Condition of Facility.**

- (a) Condition. Licensee acknowledges that Licensee has inspected the Facility and that Licensee is satisfied with and has accepted the Facility in its present condition.
- (b) Maintenance. USU shall have the continuing obligation and responsibility to maintain and keep the Facility in good order and repair, normal wear and tear excepted; provided, however, that any damages to the Facility and its appurtenances caused by Licensee or its officers, directors, agents, employees, Licensees, or invitees shall be paid for by Licensee at the actual or estimated cost of repair.
- (c) Alterations. Licensee shall not make any alterations or improvements to the Facility without the prior written consent of USU. Any alterations or improvements of whatever nature made or placed by Licensee to or on the Facility, except movable trade fixtures, shall, at the option of USU, (i) be removed by Licensee, at Licensee's expense, immediately upon the conclusion of the Event, or (ii) become the property of USU.

4. **Term of License; Postponement, or Cancellation.**

- (a) Term. The license granted in Section 1 above will be effective as of the date and time set forth on **Exhibit A** and will continue in effect, unless earlier terminated as set forth in Section 13 or postponed or terminated as set forth in this section, until the date and time set forth on **Exhibit A**.

- (b) Postponement or Cancellation. Notwithstanding any provision of this Agreement to the contrary, USU shall have the right to postpone or cancel one or more outdoor portions of the Event if USU, in its sole discretion, determines that the outdoor Authorized Areas are not safe (due to adverse weather, faulty or non-performing maintenance equipment, Facility condition, or otherwise) in accordance with the provisions of this section (the “*Safety Decision*”). USU shall give Licensee notice of a Safety Decision by any reasonable means under the circumstances, including verbal notice up to the scheduled starting time of the Event. In particular, in making a Safety Decision USU: (a) may postpone outdoor portions of the Event to another date that is mutually agreeable to USU and Licensee (in that event, all deposits and fees paid by Licensee hereunder shall apply to the rescheduled Event; and Licensee shall be obligated to pay for services not used on the scheduled date because of the postponement, including ticket takers and security); or (b) cancel the Event (in that event, USU shall refund to Licensee fees paid to USU, less the cost services not used on the scheduled date because of the cancellation, including ticket takers and security). Licensee acknowledges that USU has the right to make a Safety Decision right up to the scheduled starting time of the Event. USU shall use its commercially reasonable business judgment in making a Safety Decision, but in no event shall USU be liable to Licensee in any way for a Safety Decision, whether that Safety Decision is to proceed with outdoor portions of the Event or to postpone or cancel outdoor portions of the Event, including consequential damages that arise from such decision or injuries to persons or property. USU may solicit, receive, and consider input from Licensee and Event participants in making USU’s Safety Decision under this section but shall not be bound to follow such input and shall not be liable to Licensee or Event participants for Claims (as defined in Section 12 below) arising from USU’s Safety Decision.

5. **Fees and Additional Service Expenses.** Licensee shall pay to USU the fees set forth in **Exhibit A**. Licensee shall pay USU for any facility or service fees in addition to or in excess of those set forth in **Exhibit A**, all as calculated in accordance with the provisions set forth therein. USU reserves the right to provide these services itself or through designated Third-Party Contractors, agents, or assigns (collectively the “*Providers*”). USU shall furnish, without additional costs to Licensee, normal heat for indoor Facilities during the Event, overhead lighting, use of restroom facilities and janitorial services (consisting of cleaning of common public areas and restrooms). USU shall determine the level of staffing for each Event after consultation with, and input from, Licensee. Licensee acknowledges and understands that some services are contracted services, the costs of which are subject to change. USU shall itemize any additional service fees in an invoice, and Licensee shall pay the invoice within ten days of receipt of invoice. If Licensee fails to pay any amounts when due under this Agreement, Licensee shall pay to USU a late charge of 1.5% per month on the unpaid balance. All payments shall be made payable to “Utah State University” and shall be due as set forth in **Exhibit A** or within thirty (30) days of Licensee receiving an invoice.

6. **Abandonment or Vacation of Facility.** In the event that the Licensee fails, neglects or refuses to remove its property, or property of any of its subcontractors, from the Authorized Areas of the Facility or related parking lots and driveways promptly upon a termination for default or after the time specified for removal thereof, said property shall be deemed abandoned and USU shall have the right to remove, place in storage, or otherwise dispose of any such property at the sole cost and expense of Licensee.

7. **Non-Exclusive Use.** USU shall have the right to use or permit the use of any portion of the Facility not granted to Licensee under this Agreement to any person, firm, or entity regardless of the nature of the use of such other space.

8. **Taxes.** USU shall not be liable for the payment of taxes, late charges, or penalties of any nature relating to any Event or any revenue received by, or payments made to, Licensee in respect to any Event, except as otherwise provided by law. Licensee shall pay and discharge as they become due, promptly and before delinquency, all taxes, assessments, rates, damages, license fees, municipal liens, levies, excises, or imposts, whether general or special,

and shall indemnify USU from the same, whether ordinary or extraordinary, of every name, nature, and kind whatsoever, including all governmental charges of whatsoever name, nature, or kind, which may be levied, assessed, charged, or imposed, or which may become a lien or charge against this Agreement or any other improvements now or hereafter owned by Licensee.

9. **Insurance.**

(a) Licensee shall, at its own expense, secure and deliver to USU not less than thirty (30) days prior to the commencement of this Agreement and shall keep in force at all times during the term of this Agreement:

- (i) A commercial general liability insurance policy in form acceptable to USU, including public liability and property damage, covering its activities hereunder, in an amount not less than One Million Dollars (\$1,000,000) for bodily injury and One Million Dollars (\$1,000,000) for property damage, including blanket contractual liability and independent contractors' coverage, with no exclusions for animals and fireworks or other pyrotechnical devices;
- (ii) Commercial automotive bodily injury and property damage insurance in form acceptable to USU for business use covering all vehicles operated by Licensee, its officers, directors, agents, and employees in connection with its activities hereunder, whether owned by Licensee, USU, or otherwise, with a combined single limit of not less than One Million Dollars (\$1,000,000) (including an extension of hired and non-owned coverage); and
- (iii) Applicable workers compensation insurance for Licensee's employees, as required by applicable law.

(b) The following shall apply to the insurance policies described in clauses (a) (i) and (ii) above:

- (i) USU, and any Provider designated by USU, shall be named as additional insureds thereunder. Not less than thirty (30) days prior to the move-in date set forth on **Exhibit A**, Licensee shall deliver to USU certificates of insurance evidencing the existence thereof, all in such form as USU may reasonably require. Each such policy or certificate shall contain a valid provision or endorsement stating, "This policy will not be canceled or materially changed or altered without consent of USU nor without first giving thirty (30) days' written notice thereof to USU, and General Manager, Agricultural Heritage Center, 676 South 50 West, Kaysville, Utah." If any of the insurance policies covered by the foregoing certificates of insurance will expire prior to or during the time of an Event, Licensee shall deliver to USU at least thirty (30) days prior to such expiration a certificate of insurance evidencing the renewal of such policy or policies. The commercial liability insurance described above shall be primary and noncontributory. The coverage provided shall be occurrence-based and not claims made.
- (ii) Licensee hereby acknowledges that the coverage limits contained in any policy shall in no way limit the liabilities or obligations of Licensee under this Agreement, including, without limitation, Licensee's indemnification obligations under Section 12 below.

- (c) The terms of all insurance policies referred to in this Section shall preclude subrogation claims against USU and its respective officers, directors, employees, and agents. This does not apply to those acts, errors or omissions resulting from the sole negligence of USU.

10. **Liability and Indemnification.**

- (a) **Liability.** Licensee shall be solely liable for all losses occurring at the Facility (whether within or without an Authorized Area) caused to USU and/or persons and/or property in, on, or near the Facility before, during, or after an Event, by (i) Licensee's failure to comply with any Laws or Facility Rules or Regulations, (ii) any unlawful acts on the part of Licensee or its officers, directors, agents, employees, subcontractors, licensees, or invitees, (iii) the negligent acts, errors and/or omissions or the willful misconduct of Licensee or its officers, directors, agents, employees, subcontractors, licensees, or invitees, or (iv) the material breach or default by Licensee or its officers, directors, agents, or employees of any provisions of this Agreement, including, without limitation, the provisions of Section 15(m) hereof (relating to intellectual property matters), Section 16 hereof (relating to the Civil Rights Act), and Section 17 hereof (relating to the Americans with Disabilities Act).
- (b) **Indemnification.** Licensee shall indemnify, defend, and hold harmless USU and its respective officers, directors, agents, employees, successors, assigns, professionals, and legal representatives (collectively the "Indemnified Party") from and against any and all losses, damages, claims, injuries, causes of action, demands, obligations, suits, controversies, costs, expenses (including, without limitation, litigation expenses and attorney's fees, whether they are incurred with or without the filing of a suit or on appeal or otherwise, and whether they relate to the defense of any claims made against the Indemnified Party by third parties or to the enforcement of the indemnity by the Indemnified Party against Licensee), liabilities, judgments and liens, of whatever kind or character (collectively the "Claim"), that are caused by, that relate to, or that arise out of: (a) the matters described in Section 2(b) hereof (relating to compliance with Laws), (b) the matters described in Section 2(c) hereof relating to compliance with Noise Ordinances); (c) the matters described in Section 4(b) hereof (relating to Safety Decisions for outdoor portions of the Event); (c) the matters described in Section 10 (relating to taxes); (d) the matters described in Section 15 hereof (relating to Licensee's compliance with covenants); (e) the matters described in Section 18 hereof (relating to Copyrights and Proprietary Materials) and/or (f) personal or bodily injury to or death of persons (including riders of horses), injury to or death of animals or damage to or theft of the property of USU to the extent caused by the negligent acts, errors and/or omissions or the intentional or willful misconduct of Licensee or its officers, directors, agents, employees, subcontractors, licensees, or invitees. The provisions set forth in this section shall survive termination of this Agreement. USU shall not be liable for any special, consequential, lost profit, expectation, punitive or other indirect damages in connection with any claim arising out of or relating to this Agreement, whether grounded in tort (including negligence), strict liability, contract, or otherwise. In the event a dispute between the Parties results in litigation, in addition to any other relief to which may be entitled, the prevailing Party shall be reimbursed for reasonable attorney fees and other reasonable costs.

11. **Default, Termination and Other Remedies.**

- (a) **Default.** Licensee shall be in default under this Agreement if any of the following occur: (i) Licensee fails to pay any amount due hereunder when the same are required to be paid hereunder, (ii) Licensee or any of its officers, directors, employees or agents fail to perform or fulfill any

other material term, covenant, or condition contained in this Agreement and Licensee fails to commence a cure thereof within five (5) business days after Licensee has been served with written notice of such default and diligently to prosecute such cure to completion thereafter, or (iii) Licensee makes a general assignment for the benefit of creditors. USU shall be in default under this Agreement if USU fails to perform or fulfill any material term, covenant, or condition contained in this Agreement and USU fails to commence a cure thereof within five (5) business days after USU has been served with written notice of such default and diligently to prosecute such cure to completion thereafter. If the default relates to the space provided in the Facility, then USU may cure that default by providing reasonably equivalent space in the Facility. Nothing herein shall be construed as excusing either Party from diligently commencing and pursuing a cure within a lesser time if reasonably possible. Notwithstanding clause (ii) above, if the breach by Licensee or any of its officers, directors, employees, or agents of such other term, covenant, or condition is such that it threatens the health, welfare, or safety of any person or property, at the sole discretion of USU, then USU may, in its discretion, require that such breach be cured in less than five (5) business days or immediately if an emergency.

- (b) Termination. Upon a material default and failure to cure pursuant to Section 13(a) hereof, the non-breaching Party may, at its option, upon written notice or demand upon the other Party, cancel and terminate the license granted in Section 1 hereof and the obligations of the Parties with respect thereto.
- (c) Injunctive Relief. In addition to any other remedy available at law, equity, or otherwise, USU shall have the right to seek to enjoin any breach or threatened breach and/or obtain specific performance of this Agreement by Licensee upon meeting its burden of proof of such breach or threatened breach as required by applicable statute or rule of law.
- (d) Unique Qualities. The Parties agree and acknowledge that the Licensee is a unique entity and, therefore, the rights and benefits that will accrue to USU by reason of this Agreement are unique and that USU may not be adequately compensated in money damages for Licensee's failure to comply with the material obligations of Licensee under this Agreement and that therefore USU, at its option, shall have the right to pursue any remedy available at law, equity, or otherwise, including the recovery of money damages and/or the right to seek equitable relief (whether it be injunctive relief, specific performance or otherwise) in the event that Licensee violates its obligation to hold an Event at the Facility.
- (e) Liquidated Damages. If Licensee cancels any Event covered by this Agreement, then Licensee agrees to pay to USU the following amounts as liquidated damages and not as a penalty, and the Parties agree that such amounts constitute reasonable provision for liquidated damages and that such damages could not otherwise be calculated:
  - (i) If Licensee cancels one year or more before the first scheduled day of the Event, then Licensee shall forfeit the Initial Deposit shown in **Exhibit A**, as liquidated damages.
  - (ii) If Licensee cancels six months or more before the first scheduled day of the Event, but less than one year before the first scheduled day of the Event, then fifty percent of the total fee shown in **Exhibit A** shall be payable to USU as liquidated damages within 10 days of invoice.

- (iii) If Licensee cancels less than six months before the first scheduled day of the Event, then the entire fee shown in **Exhibit A** shall be payable to USU as liquidated damages within 10 days of invoice.
- (f) **Costs of Enforcement.** If there is a dispute concerning this Agreement or if a Party seeks to enforce its rights under this Agreement, then the non-prevailing Party shall pay all reasonable costs and expenses that the prevailing Party incurs in connection with the dispute or enforcement or in pursuing any remedy provided hereunder or by relevant statutes or other Laws, including, without limitation, attorneys' fees and advanced costs; postage and delivery, credit check and other out of pocket expenses incurred by the prevailing Party; fees and expenses of collection agencies (whether based on a percentage of the amount owed by the non-prevailing Party, an hourly fee, a fixed fee or otherwise), and whether such costs and expenses are incurred with or without suit; before or after judgment, in any appeal; in any proceedings under any present or future federal bankruptcy act or state receivership act; or in connection with any mediation, arbitration or other alternative dispute resolution proceeding initiated by the Parties.
- (g) **USU Remedy.** If USU fails to cure a material default pursuant to Section 13(a), then Licensee's sole remedy shall be as follows: (i) USU shall refund to Licensee (for amounts already paid) or excuse Licensee's payment of (for amounts unpaid) the fees shown in **Exhibit A**; and (ii) as liquidated damages (and not as a penalty) USU shall pay Licensee an amount equal to that identified in paragraph 13(e) above, depending on the date of default. In no event shall USU be liable for incidental or consequential damages sustained by Licensee or others claiming by, through or under Licensee in connection with any breach by USU of this agreement.

12. **Representations and Warranties.** Each Party hereby represents and warrants to the other Party, and agrees that (i) it has the full power and authority to enter into this Agreement and perform each of its obligations hereunder; (ii) it is legally authorized and has obtained all necessary regulatory approvals for the execution, delivery, and performance of this Agreement; and (iii) no litigation or pending threatened claims of litigation exist which do or might adversely affect its ability to fully perform its obligations hereunder or the rights granted by it to the other Party under this Agreement.

13. **Covenants.** Licensee hereby covenants as follows:

- (a) Licensee shall not occupy or use the Facility except as provided in this Agreement.
- (b) Licensee shall comply with all Laws and legal requirements, which arise in respect of the Facility and the use and occupation thereof.
- (c) Licensee shall not cause or permit any Hazardous Material to be used, stored, or generated on, or transported to and from the Facility. "*Hazardous Material*" shall mean, without limitation, those substances included within the definitions of "hazardous substances", "hazardous materials", "toxic substances", or "solid waste" in any applicable state or federal environmental Law.
- (d) Licensee shall not advertise, paint, post, or exhibit, nor allow to be advertised, painted, posted, or exhibited, signs, advertisements, show bills, lithographs, posters, or cards of any description inside or outside or on any part of the Facility except upon written permission of USU.
- (e) Licensee shall not broadcast by television or radio any Event scheduled to be presented in the Facility under the terms of this Agreement without the prior written approval of USU. If approval



is granted by USU, then all monies received from such broadcast will be considered as revenues for which USU may seek additional fees.

- (f) Licensee shall not cause or permit beer, wine, or liquors of any kind to be sold, given away, or used upon the Facility except upon prior written permission of USU, and as allowed by applicable law and regulation.
- (g) Licensee shall not operate any equipment or materials belonging to USU without the prior written approval of USU.
- (h) No portion of any passageway or exit shall be blocked or obstructed in any manner whatsoever, and no exit door or any exit shall be locked, blocked, or bolted while the Facility is in use. Moreover, all designated exit ways shall be maintained in such manner as to be always visible.
- (i) Licensee shall abide by and conform to all policies and procedures and fire safety rules and regulations adopted or prescribed by USU, a copy of which has been provided to Licensee and the terms of which are incorporated by reference herein.
- (j) Licensee shall not encumber, pledge, or otherwise use as security its interests in this Agreement for any purpose whatsoever without the express written consent of USU.
- (k) Licensee agrees to abide by all Davis County, Kaysville, and State of Utah policies and ordinances regarding the placement and posting of advertising and Event announcement signage. The Licensee also agrees to accept responsibility for the actions of all contracted advertising and sign posting companies.
- (l) In permitting the use of the space hereinbefore mentioned, USU does not relinquish, and does hereby retain, the right to enforce all rules for the management and operation and maintenance of such space. Representatives of USU may enter the Authorized Areas at any time and on any occasion without any restrictions whatsoever. The Facility shall at all times be subject to USU's right to control.
- (m) With respect to any Event at the Facility, Licensee shall comply fully with any and all federal, state, foreign, local, and municipal intellectual property statutes, laws, regulations, ordinances, rules, constitutional provisions, common laws, and rights of others in any copyrights or other intellectual property rights applicable to Licensee's activities at the Facility, including, without limitation, compliance with any licenses for the use of musical works and other matters protected by intellectual property rights of others.
- (n) Licensee shall use the proper name of the Facility, as it might change from time to time after the date hereof, in any advertising, marketing and communications that refer to the Facility, as such proper name is communicated by USU to Licensee in writing (as of the date hereof, the proper name is "Agricultural Heritage Center"); provided, however, that if the name changes, then Licensee shall not be required to replace any printed materials that have already been prepared prior to the date of the communicated name change.
- (o) Licensee hereby assumes all responsibilities and liabilities associated with minors participating in the Event. Licensee shall be responsible for determining and providing appropriate supervision and oversight of minors participating in the Event. Licensee agrees to ensure that its minors

participating in the Event comply with (i) any applicable curfew regulations associated with the Facility or associated Kaysville and Davis County and (ii) the following Minor Participant Behavioral Code of Conduct: (1) The possession or use of alcohol, tobacco, and other drugs is prohibited. (2) The possession or use of fireworks, guns, and other weapons is prohibited. (3) The operation of a motor vehicle by minors is prohibited while attending and participating in the Event. (4) No violence, including sexual abuse or harassment, will be tolerated. (5) Hazing of any kind is prohibited. (6) Bullying including verbal, physical, and cyber bullying is prohibited. (7) Theft of property is prohibited. (8) Misuse or damage of USU property is prohibited. Charges may be assessed against those participants who are responsible for damage or misuse of USU property. (9) The inappropriate use of cameras, imaging, and digital devices is prohibited, including use of such devices in showers, restrooms, or other areas where privacy is expected by Event participants.

14. **Civil Rights Act.** During the performance of this Agreement, Licensee shall comply fully with Title VI and Title VII of the Civil Rights Act of 1964, as amended, and all other regulations promulgated thereunder, in addition to all applicable state and local ordinances concerning Civil Rights.

15. **Americans With Disabilities Act.** With respect to any Event at the Facility, Licensee recognizes that it is subject to the provisions of Title III of the Americans with Disabilities Act, as amended ("ADA"). Licensee represents that it has viewed or otherwise apprised itself of the access into the Facility, together with the common areas inside, and accepts such access, common areas, and other conditions of the Facility as adequate for Licensee's responsibilities under the ADA. Licensee shall be responsible for ensuring that the Facility complies and continues to comply in all respects with the ADA, including accessibility, usability, and configuration insofar as Licensee modifies, rearranges, or sets up in the Facility to accommodate Licensee's usage. Licensee shall be responsible for any violations of the ADA that arise from Licensee's reconfiguration of the seating areas or modification of other portions of the Facility to accommodate Licensee's usage. Licensee shall be responsible for providing auxiliary aids and services that are ancillary to its usage and for ensuring that the policies, practices, and procedures it applies in connection with an Event are in compliance with the ADA.

16. **Copyrights and Proprietary Material.** Licensee shall obtain all necessary licenses and shall pay all costs and fees arising from the use of copyrighted music or dramatic materials, or any other property subject to any trademark, patent or other proprietary right which is used or incorporated in the Event. Licensee shall indemnify, defend, and hold harmless the Indemnified Party from any liability, claim or costs, including attorney's fees, arising from the use of any such materials or such Claims of infringement or violation of the rights of the owners of such materials.

17. **Construction of this Agreement**

- (a) Choice of Law and Venue. The Agreement will be governed by the laws of the State of Utah, without regard to conflicts of laws principles. Venue for any lawsuits, claims, or other proceedings between the Parties relating to or arising under the Agreement shall be exclusively in the State of Utah.
- (b) Section Headings. The section headings are inserted herein only as a matter of convenience and for reference and in no way are intended to be a part of this Agreement or to define, limit, or describe the scope or intent of this Agreement or the particular sections hereof to which they refer.
- (c) Entire Agreement; Amendments. This Agreement (including all Exhibits and other documents and matters annexed hereto or made a part hereof by reference) contains all the covenants, agreements,

terms, provisions, and conditions relating to the rights and obligations of USU and Licensee with respect to the Facility. No alterations, amendments, or modifications hereof shall be valid unless executed by an instrument in writing by the Parties hereto.

- (d) Severability. If any provision or a portion of any provision of this Agreement is held to be unenforceable or invalid by a court of competent jurisdiction, then the validity and enforceability of the enforceable portion of any such provision and/or the remaining provisions shall not be affected thereby.
- (e) Time. Time is of the essence hereof, and every term, covenant, and condition shall be deemed to be of the essence hereof.
- (f) Successors. This Agreement shall be binding upon, and shall inure to, the benefit of the successors and assigns of USU, and to such successors and assigns of Licensee as are permitted to succeed to the Licensee's right upon and subject to the terms hereof.
- (g) Independent Contractor; No Partnership. USU and Licensee shall each be and remain an independent contractor with respect to all rights and obligations arising under this Agreement. Nothing herein contained shall make, or be construed to make, USU or Licensee a partner of one another, nor shall this Agreement be construed to create a partnership or joint venture between and of the Parties hereto or referred to herein.
- (h) Singular and Plural; Gender. Whenever the context shall so require, the singular shall include the plural, and the plural shall include the singular, and each gender shall include all other genders.
- (i) Execution. This Agreement may be signed in counterparts. A faxed or scanned and electronically transmitted facsimile of a signature-bearing page will be conclusive evidence of execution and delivery.

18. **Miscellaneous.**

- (a) Waiver. The failure of any Party to enforce any of the provisions of this Agreement, or any rights with respect hereto, or the failure to exercise any election provided for herein, will in no way be considered a waiver of such provisions, rights, or elections, or in any way affect the validity of this Agreement. The failure of any Party to enforce any of such provisions, rights, or elections will not prejudice such Party from later enforcing or exercising the same or any other provisions, rights, or elections which it may have under this Agreement.
- (b) Assignment. Neither this Agreement nor any of the rights or obligations hereunder may be assigned or transferred in any manner whatsoever by Licensee without the prior written consent of USU.
- (c) Government Records and Management Act. Licensee acknowledges that USU is a governmental entity subject to the Utah Government Records Access and Management Act, Utah Code Ann., Section 63G-2-101 et seq., as amended ("GRAMA"); that certain records within USU's possession or control, including without limitation, the Agreement (but not including (i) proprietary software or (ii) materials to which access is limited by the laws of copyright or patent), may be subject to public disclosure; and that USU's confidentiality obligations shall be subject in all respects to compliance with GRAMA. Pursuant to Section 63G-2-309 of GRAMA, any confidential

information provided to USU that Licensee believes should be protected from disclosure must be accompanied by a written claim of confidentiality with a concise statement of reasons supporting such claim. Notwithstanding any provision to the contrary in the Agreement, USU may disclose any information or record to the extent required by GRAMA or otherwise required by law, and to USU's employees, attorneys, accountants, consultants, and other representatives on a need-to-know basis; provided, that such representatives shall be subject to confidentiality obligations no less restrictive than those set forth in the Agreement.

- (d) **Governmental Immunity.** Licensee further acknowledges that USU is a governmental entity under the Governmental Immunity Act of Utah, Utah Code Ann., Section 63G-7-101 et seq., as amended ("*Immunity Act*"). Nothing in the Agreement shall be construed as a waiver by USU of any protections, rights, or defenses applicable to USU under the Immunity Act, including without limitation, the provisions of Section 63G-7-604 regarding limitation of judgments. It is not the intent of USU to incur by contract any liability for the operations, acts, or omissions of Licensee or any third party and nothing in the Agreement shall be so interpreted or construed. Without limiting the generality of the foregoing, and notwithstanding any provisions to the contrary in the Agreement, any indemnity obligations of USU contained in the Agreement are subject to the Act and are further limited only to claims that arise directly and solely from the negligent acts or omissions of USU. Any limitation or exclusion of liability or remedies in the Agreement for any damages other than special, indirect, or consequential damages, shall be void and unenforceable.
- (e) **USU Insurance.** USU carries insurance through the State Risk Manager of the State of Utah up to the limits required by the State Risk Manager and applicable law. Nothing in the Agreement shall require USU to carry different or additional insurance, and any obligations of USU contained in the Agreement to name a Party as additional insured shall be limited to naming such Party as additional insured with respect to USU's negligent acts or omissions.
- (f) **Notice.** Any payment, notice, or other communication required or permitted to be given to either Party hereto shall be in writing and shall be deemed to have been properly given and effective: (a) on the date of delivery if delivered in person or by electronic mail during recipient's normal business hours; or (b) on the date of attempted delivery if delivered by courier, express mail service or first-class mail, registered or certified. Such notice shall be sent or delivered to the respective addresses listed in the opening clause of this Agreement.
- (g) **Force Majeure.** If the Facility is damaged from any cause whatsoever or if any other casualty or unforeseeable cause beyond the control of the Parties, including, without limitation, acts of God, fires, floods, epidemics, pandemics, quarantine or other restrictions imposed by government officials, terrorist acts, strikes or labor disputes (though not of the employees of the Licensee), failure of public utilities, or unusually severe weather, prevents occupancy and use, or either, as granted in this Agreement, then the Parties shall be relieved of their respective obligations hereunder. In the event performance is excused in accordance with the foregoing provisions, USU shall refund to Licensee any deposits paid by Licensee, less any reasonable costs and expenses which have been incurred by USU up to the time further performance is excused.
- (h) **Public Health.** The Parties acknowledge the uncertainty caused by the Covid-19 pandemic and other potential public health emergency, and notwithstanding any other provisions to the contrary, Licensee agrees that USU, in its sole discretion, may cancel the Event at any time for reasons related to Covid-19 or other public health emergency, including without limitation health or other orders, whether issued by Davis County or other government officials. If USU cancels the Event

in accordance with the foregoing provisions, USU shall not owe liquidated or other damages to Licensee but shall refund to Licensee any deposits paid by Licensee, less any reasonable costs and expenses which have been incurred by USU up to the time of cancellation.

- (i) **Reservation of Rights.** As the owner of a publicly owned facility, USU retains the right, under the Constitution of the State of Utah (Article XIV Sec. 3), to decline to provide funding for the operation of the Facility in the sole discretion of USU. Where such non-funding renders performance of this Agreement difficult, impractical, or impossible, it shall not be considered a default under or breach of the terms of this Agreement and the USU will not be liable for such failure to perform, except there shall be a pro-rata reduction in the consideration which would otherwise be payable or due under this Agreement.
  - (j) **Construction.** USU shall notify Licensee of any construction or remodeling to be performed in the Facility immediately prior to or during the Event. Although USU does not anticipate any significant interference with Licensee's Event, some impact from noise or construction interruption is possible. If construction on the Facility creates noise or similar construction activities that interfere in any material way with Licensee's Event, then (i) Licensee must give USU written notice of the interference within 30 days after the conclusion of the Event and (ii) as warranted by the interference USU will reduce the fees proportionately, in an amount that is mutually acceptable to both USU and Licensee. Notwithstanding the foregoing, however, in connection with any interference: (A) USU will not be responsible for any incidental or consequential damages resulting from the interference, including any injury to or death of animals; and (B) in no event shall USU be liable to Licensee for any amount greater than the fee set forth in **Exhibit A**.
  - (k) **BY SIGNING THIS AGREEMENT AND SUBMITTING AN ADVANCE PAYMENT OR DEPOSIT TO USU, LICENSEE IS MERELY MAKING AN OFFER TO USU TO ENTER INTO THIS AGREEMENT. THIS AGREEMENT SHALL NOT BECOME BINDING ON THE PARTIES UNTIL USU EXECUTES AND DELIVERS THIS AGREEMENT.** Until USU executes and delivers this Agreement, any advance payment that USU deposits shall be held in trust for Licensee and shall be refunded to Licensee if the Agreement is not accepted by USU. LICENSEE MAY NOT RELY ON ANY VERBAL ASSURANCES MADE BY USU'S PERSONNEL OR UPON THE AVAILABILITY OF ANY REQUESTED DATES. AUTHORIZED AREAS OR USES UNTIL USU EXECUTES AND DELIVERS THIS AGREEMENT.
  - (l) **Sanctioned Event.** It is Licensee's sole responsibility to qualify an Event as a sanctioned or recognized horse race with the Utah Horse Racing Commission if Licensee desires the Event to be sanctioned, including filing all applications and compliance with all regulations. USU makes no representations or warranties to Licensee that any horse race is so qualified.
21. **Animals.** USU does not assume any obligation to feed, water and care for animals involved in the Event, but USU shall have the right on an emergency basis to provide such care as described below.
- (a) Licensee shall be responsible to feed, water and care for all animals involved in the Event in accordance with standards of good animal husbandry (so that the animals are maintained in good health and comfort and are safe from potential hazards) and in accordance with applicable law. Without limiting the foregoing:

- (i) Licensee shall not violate state or local laws against animal abandonment, abuse, cruelty, or neglect.
  - (ii) Licensee shall comply with all federal, state, and local laws and ordinances for the ownership and care of animals, including confining and controlling animals.
- (b) USU shall not be deemed to have “custody” (ownership, possession, or control) of Licensee’s animals or to be a “handler” (i.e., having charge, care, control, custody, or possession) of Licensee’s animals for purposes of state or local law merely because the animals are boarded in the Facility as part of the Event.
- (c) If, in USU’s sole judgment, it appears that animal(s) involved in the Event are being neglected or abused, then USU reserves the right (without giving Licensee advance notice of any kind) to take either or both of the following actions, without being obligated in any way to do so:
- (i) To provide water, food, veterinary care or other care for the animals on an emergency basis (such emergency care shall not give USU custody or make USU the handler of the animal; instead USU shall be deemed merely to be providing “Good Samaritan” care for the animal); Licensee shall immediately reimburse USU for all amounts it expends to provide this care (as evidenced by an invoice from USU to Licensee), together with interest thereon at the Default Rate from and after the date of expenditure; any care so given by Licensee shall be covered by Utah Code §§38-2-1 and 4 (as modified or replaced); and
  - (ii) To notify animal control, law enforcement and other appropriate authorities.
- (d) LICENSEE RELEASES USU FROM ALL CLAIMS ARISING FROM THE FOREGOING CARE OR REPORTING.
- (e) This Agreement and persons’ involvement with horses or other livestock is subject to the provisions of Utah law limiting liability with respect to horses and livestock, including the provisions of Utah Code '78B-4-202 (as amended, or any successor provision).

IN WITNESS THEREOF the Parties have caused this Agreement to be duly executed on their behalf by a duly authorized representative as of the Effective Date set forth above.

UTAH STATE UNIVERSITY

LICENSEE

By: \_\_\_\_\_

By: \_\_\_\_\_

Print Name:

Print Name:

Title:

Title (if applicable):

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

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

**EXHIBIT A**

**EVENT NAME:**

**PURPOSE:**

**AUTHORIZED AREAS & SCHEDULE:**

Authorized Area(s)	Start Date	End Date	Times of Use	Purpose

<<LIST EACH AREA THAT WILL BE USED FOR THE EVENT; ADJUST TABLE AS NEEDED>>

**FACILITY FEES:**

Authorized Area(s)	Number of Days	Per Day Price	Area Fee
<b>Total Facilities Fee</b>			

<<ADJUST TABLE AS NEEDED>>

**SERVICES FEES:**

Service Description	Service Fee
<b>Total Services Fee</b>	

<<ADJUST TABLE AS NEEDED>>

**Grand Total\*:**

**Initial Deposit:**

Due: <<INSERT DATE>>

**Additional Event Notes:**

\*The Grand Total may be adjusted per Section 1(b) and billed in keeping with Section 5.