

ERMA BYRD HIGHER EDUCATION CENTER & ALLIED HEALTH WING

FACILITY USE AGREEMENT

This Agreement is made _____ day of _____, 202____, by and between the Erma Byrd Higher Education Center & Allied Health Wing (the Center) and, _____, whose address is _____ for the purpose of _____. The facility or facilities covered by this Agreement are _____ from _____ to _____.

The College has agreed to allow Facility User to use the Facility subject to the following terms and conditions:

1. **RENTAL FEE.** – In consideration for the use of the premises described above, Facility User shall pay the sum of _____, which shall be paid in full on or before _____ (last date by which the Center will accept payment). Failure to pay in full by this date shall result in cancellation of Facility User’s event. Any cost incurred by the Center as a result of a cancellation shall be the financial responsibility of Facility User. All payments must be made by credit card or check or money order payable to the Erma Byrd Higher Education Center. The Center will charge a \$30 fee for all returned checks.

2. **SERVICE FEE AND COLLEGE PERSONNEL.** – In addition to the above-stated rental fee, the Center may charge Facility User a fee for any additional services provided by the Center _____ (Service Fee). The Service Fee is dependent on the purpose of Facility User’s function and may include, without limitation, supervisory and/or security staff, out of the ordinary or overtime custodial help when required, out of the ordinary or overtime set-up or take-down costs, hauling or handling third-party equipment, use or set-up of the Center’s equipment (e.g., projectors, amplifiers, screens, audio-visual equipment, etc.), use of the College’s equipment operators, repairs and damage, or other costs as determined by the Center. Facility User shall pay the Service Fee in advance of its event at the Center’s current established rate, including overtime. The Center will bill Facility User directly any additional charges for damages to the facility. Any of the Center’s employees who provide services to Facility User’s function shall be paid by the Center: Facility User shall not pay any Center employees directly.

3. **USE OF COLLEGE PERSONNEL AND EQUIPMENT.** –
 - A. The Center reserves the right to require that an appropriate Center staff member(s), to be present at any meeting, function or event held on Center premises and/or property.

 - B. An authorized member of the Center’s staff shall be available on campus at all times when the Facility in use by Facility User. Facility User shall contact the staff member to correct problems in the operation of the Facility or any part of the

Center's premises or property in use. The staff member will report immediately any damage or misuse of the Center's facilities, premises or property to Facility User and the Center.

- C. The Center reserves the right to require a security officer or security officers to be present at any scheduled event at the expense of Facility User.
 - D. Facility User shall not remove Center-owned equipment, furniture or fixtures from the Facility or any Center building. The Center may charge a Service Fee for equipment rental and/or operation as described in Paragraph 2 above.
 - E. All moving of furniture or equipment shall be done under the supervision of an appropriate Center employee.
 - F. The Center shall not issue or lend to Facility User any keys, key fobs, access cards or security codes to the Facility or any other building on the Center's campus. A Center employee will open any doors required to be opened for Facility User's event.
4. **CANCELLATION.** – Facility User shall give the Center written notice at least 30 days prior to the effective date of this Agreement if it intends to cancel this agreement. If Facility User gives the Center less than 30 days' notice of its intent to cancel this Agreement, the Center shall be relieved of any further obligation under this Agreement and may charge Facility User a cancellation fee commensurate with the costs incurred by the Center as a result of the cancellation. In the event the Center must cancel this Agreement, Facility User will be entitled to any deposit it has paid. However, in no event shall the Center be liable to Facility User for any lost profits or incidental, indirect, special, or consequential damages arising out of Facility User's inability to use the Facility.
5. **FORCE MAJEURE.** – Should the Center's premises be destroyed, damaged, or made impractical for use by fire, or by the elements, mob, riot, war or civil commotion, or by any other cause reasonably beyond the Parties' control, making the event impracticable, illegal or impossible to fully perform under this Agreement, the Center may, at its sole discretion, terminate and void this agreement without liability upon written notification to Facility User.
6. **INSURANCE.** – Facility User promises and warrants that it carries liability insurance with a minimum liability occurrence limit of one million dollars (\$1,000,000). Facility User will provide a certificate of insurance to the Center at least seven days prior to the date upon which Facility User begins to use the above-described premises. The certificate of insurance shall indicate that Facility User has made the Center an "additional insured" on Facility User's policy with respect to the use of the Facility by Facility User.
7. **INDEMNIFICATION AND RELEASE OF CLAIMS.** – Facility User agrees to hold harmless, indemnify, and defend the Center, including its Board of Governors, agents, employees, and representatives, from any and all liability for injury or damage including, but not

limited to, illness, exposure to infectious/communicable disease, bodily injury, personal injury, emotional injury, or property damage that may result from any person using the Facility or the Center's premises or property for Facility User's purposes, regardless of whether such injury or damage results from the negligence of the Center, its agents, employees, and representatives or otherwise. Further, Facility User hereby forever releases the Center and its Board of Governors, agents, employees, officers, and representatives from all debts, claims, demands, damages, actions, and causes of action whatsoever that it may have or may hereafter have as a result of Facility User's use of the Facility or presence on the Center campus, premises, and property.

8. **CONDITION OF PREMISES.** – Under no circumstances shall Facility User change, alter, add to, or remove anything from the Facility or the premises, property, equipment, or fixtures of the Center and shall leave the Facility and the Center's property, premises, equipment, and fixtures in the same condition as they existed on the date that Facility User's possession of the Facility commenced. Specifically, Facility User shall not dig or drill holes or place any nails, screws, tacks, tape, or any type of adhesive that will mar, deface, or injure the surface onto any wall, floor, or ceiling of the Facility or the Center's premises, property, equipment, or fixtures. Facility User shall be responsible for any and all damage to the Center's Facility, premises, property, equipment, or fixtures caused by the acts of Facility User or Facility User's agents, employees, patrons, or guests, whether accidental or otherwise. Facility User shall dispose of its decorations, materials, equipment, furnishings, and rubbish left after its use of the Facility. If it fails to do so, the Center will bill Facility User for any expense it incurs in remediating the same.
9. **COMPLIANCE WITH LAWS AND CENTER RULES.** – Facility User shall not use the premises for any unlawful purpose and it and its employees, agents, representatives, patrons, and guests shall obey all laws, rules, and regulations of all governmental authorities while using the Facility or the Center's premises or property. Further, Facility User shall abide by any Center rules for the use of the Facility that are attached to this Agreement. In allowing the use of its facilities, the Center does not relinquish and hereby retains the right to enforce these rules. Duly authorized representatives of the Center may enter the Facility and all of the Center's premises at any time, without restriction, to ensure that Facility User is adhering to these rules. The Center reserves the right to eject any objectionable person or persons from any portion of its premises and, upon the exercise of this authority, Facility User hereby waives any right or claim for damages against the Center, its Board of Governors, or any of its employees, representatives, or agents.
10. **PURPOSE.** – Facility User shall use the Facility for the purpose stated above and for no other purpose. Facility User agrees that it will not use the Facility or the Center's premises or property for any purpose that is contrary to the mission or purpose of the Center, which is a public institution of higher education. No lewd or incident actions, conduct, language, pictures, or portrayals shall be included as part of Facility User's event for any purpose.

11. **ALCOHOL-FREE AND DRUG-FREE CAMPUS.** – The Center prohibits the use of drugs or other controlled substances without a valid prescription. Smoking, the use of tobacco products (including the use of smokeless cigarettes and smokeless tobacco), and the use of alcoholic beverages are prohibited in all Center buildings and on all Center property. Facility User agrees that it will not allow its employees, agents, representatives, patrons, or guests to use such substances anywhere in the Facility or the Center’s property or premises.
12. **CONCURRENT USE.** – The buildings and grounds of the Center are primarily used for educational purposes. In addition, the Center may rent other parts of the Facility that are not included within the rented areas covered by this Agreement. The Center reserves the right to make general public address announcements, post information and notices, and distribute literature concerning future events to be held by the Center or other event holders at the Facility during Facility User’s utilization of the premises.
13. **SUPERVISION.** – Facility User is solely responsible to implement appropriate screening and supervision procedures to protect children, youth, and vulnerable adults attending Facility User’s function. Facility User’s adult leaders shall remain with their groups during all activities and are responsible for the conduct of their groups.
14. **COMMERCIAL USE PROHIBITED.** – Games of chance or lotteries are not permitted in the Facility or on the property or premises of the Center except as prescribed by law and with prior written approval of the College. Any and all products that Facility User wishes to sell, in the event they are not provided by the Center, must be approved by the Center in advance of Facility User’s event.
15. **FOOD AND BEVERAGE.** – The Center may have a food service vendor on-site that is the sole provider of food services provided at the Center. This vendor shall have the right of first refusal prior to Facility User bringing an outside vendor to the Center’s campus.
16. **ASSIGNMENT.** – Facility User shall not assign this agreement, in whole or in part, to another party, and any such assignment will void this Agreement at the sole option of the Center.
17. **GOVERNING LAW, JURISDICTION, AND VENUE.** – This Agreement shall be governed by the laws of the State of West Virginia. Any dispute of any nature whatsoever arising out of this Agreement shall be determined by a court of competent jurisdiction in Raleigh County, West Virginia.
18. **ENTIRE AGREEMENT.** – This Agreement contains the entire agreement between the Center and Facility User and supersedes all prior written or oral agreements relating to the subject matter.
19. **SEVERABILITY.** – If any provision of this Agreement is held invalid or unenforceable by a court of competent jurisdiction, the other provisions will remain enforceable, and the

invalid or unenforceable provision will be considered modified so that it is valid and enforceable to the maximum extent permitted by law.

- 20. **COUNTERPARTS.** – This Agreement may be executed in one or more counterparts, each of which will be deemed an original and all of which shall be taken together and deemed to be one instrument. Transmission by fax or emailed PDF of executed counterparts constitutes effective delivery.
- 21. **PERSONS TO CONTACT.** – If either Party to this Agreement needs to contact the other, such contact shall be made as follows:

On behalf of the Erma Byrd Higher Education Center & Allied Health Wing:

Name: _____
Title: _____
Address: _____
City, State, Zip: _____
Phone: _____
Email: _____

On behalf of Facility User:

Name: _____
Title: _____
Address: _____
City, State, Zip: _____
Phone: _____
Email: _____

Facility User has read and understands the terms of this Facility Use Agreement and, by its signature below, agrees to abide by said terms and conditions.

**[ERMA BYRD HIGHER EDUCATION CENTER & ALLIED HEALTH WING
DIRECTOR – FULL NAME]**

By: _____
[NAME], [TITLE]

Date: _____

[FULL NAME OF FACILITY USER]

By: _____
[NAME], [TITLE]

Date: _____