



FACILITY RENTAL AGREEMENT
TERMS AND CONDITIONS

1. Definitions

"Additional Fees" means any other funds to be paid by the Client to the University arising out of the Client's rental of the Facility or the holding of the Event, including, but not limited to, services provided by the University to the Client for the Event (other than University Services); interest payments; repair or replacement of equipment or repair of the Facility or other University property damaged by the Client or its employees, subcontractors, suppliers, agents or attendees at the Facility; and any other costs or expenses of whatever kind or nature incurred by the University arising out of the Client's non-fulfillment of any of its responsibilities or obligations under this Agreement.

"Agreement" means the Facility Rental Agreement and any schedules and exhibits attached thereto.

"Cancellation Charges" means those charges as defined in Section 3.

"Client" means the individual or organization that is renting the Facility.

"Client Materials" means any materials, equipment, supplies or other items of whatever nature or kind brought by the Client for use at the Facility or the Event.

"Commencement Date" means the start date of the Facility rental period.

"Deposit" means the amount of money payable in advance by the Client to the University under this Agreement.

"Event" means the activity(ies) for which the Client will be using the Facility as described in the Facility Rental Agreement.

"Facility" means those premises of the University that are being rented by the Client for the Event.

"Fee" means the price to be paid by the Client to the University in respect of the rental of the Facility.

"Food Services Provider" means the University's food and beverage caterer.

"Outside Caterer" means any food and beverage caterer other than the Food Services Provider.

"Facility Rental Period" means the period of time from the first date to the last date specified in the agreement.

"University" means The University of Winnipeg.

"University Services" means those services, equipment and supplies to be provided by the University in relation to the Facility as specifically identified in this Agreement, the costs of which are included in the Fee.

2. Payment Terms

- 2.1 The Client will pay a deposit of twenty five (25%) per cent of the Fee to the University upon the execution of this Agreement. The Deposit will be paid by the Client by credit card or cheque.
- 2.2 The Deposit will be applied by the University, in its sole discretion, against any of the following: (i) the Fee; (ii) Additional Fees; and (iii) Cancellation Charges. Upon completion of the Agreement and payment of all monies due to the University, the balance of the Deposit (if any) shall be released to the Client.
- 2.3 The Client shall pay the Fee and Additional Fees invoiced by the University pursuant to this Agreement.
- 2.4 The Fee, Additional Fees and Cancellation Charges are exclusive of federal, provincial and local excise, sales, use, property and similar taxes, which, when applicable, shall be authorized and shown separately on this Agreement or on any invoice issued by the University pursuant to this Agreement.

3. Cancellation Charges

The Client may cancel this Agreement at any time prior to the Commencement Date upon written notice and payment to the University as per the following cancellation charges:

- (a) **25%** if cancellation is 28 days prior to the Commencement Date, plus **10%** administration fee.
- (b) **50%** if cancellation is 14 days prior to the Commencement Date, plus a **10%** administration fee.

- (c) **100%** if cancellation is 13 days or less prior to the Commencement Date, plus a **10%** administration fee.

4. Client Responsibilities

- 4.1 The Client will keep the Facility clean and will comply with the rules of the University in the use of its property.
- 4.2 The Client shall use its best efforts to keep the Facility safe from fire, theft, trespass and unauthorized use.
- 4.3 The Client will not permit any smoking within the Facility or in the building where the Facility is located as the University is a smoke-free campus.
- 4.4 Unless otherwise provided for in this Agreement, Client shall not permit any food or beverages in classrooms, seminar rooms or theatres.
- 4.5 Unless otherwise provided for in this Agreement, the sale and/or display of merchandise, goods or exhibits by the Client or any of its agents or attendees at the Event are strictly prohibited.
- 4.6 The Client will leave the Facility in good order after the Event. The Client shall cause the Facility to be vacated within one-half hour after the end of each day's Event and at the conclusion of the overall Event.
- 4.7 The Client will ensure that all aisles and exits within the Facility are kept clear of obstacles.
- 4.8 The Client shall not, construct, erect or attach or cause or permit to be constructed, erected or attached any device, fixture or other thing of any nature to any part of the Facility without the prior written consent of the University. In the event the University has agreed that the Client may erect posters advertising the Event, the Client is responsible for posting and tearing down its posters. The Client is responsible for repairing any damage caused to the Facility by the erection of such posters.
- 4.9 Unless otherwise provided in this Agreement, the Client shall not, nor cause or allow any other person to bring or place upon University property or the Facility any musical instrument, machine, equipment, apparatus or other device.
- 4.10 Any University equipment provided to the Client for the Event shall be operated by the Client at its own risk and shall be returned to the University in good working order immediately following the conclusion of the Event.

5. Use of Facility

- 5.1 The Client will use the Facility for the Event only and for no other purpose.
- 5.2 The Client shall be responsible for the cost, repair or replacement of the University's equipment and for the cost or repair of the Facility should such equipment or Facility become damaged during the Client's or its employees', contractors', suppliers', attendees' or agents' use of same.
- 5.3 The Client will take all necessary precautions, at all times, for the safety of its employees, contractors, suppliers, agents, attendees and others at the Facility, including, but not limited to obeying all applicable laws and regulations and the University's safety rules. The operation of all equipment at the Facility is the responsibility of the Client. The Client is responsible for the conduct of all employees, contractors, suppliers, agents, attendees or others participating at the Event or using the Facility.
- 5.4 The Client's personnel shall be employees solely of, and shall be supervised solely by, the Client and shall not be considered to be employees of the University.
- 5.5 Client Materials may be shipped to the University prior to the Event. The Client is responsible for the set-up and distribution of the Client Materials and its equipment, displays, goods, apparatus and chattels in the Facility. The Client shall immediately remove all Client Materials and its equipment, displays, goods, apparatus and chattels at the conclusion of the Event.
- 5.6 Any Client Materials and Client equipment, displays, goods, apparatus and chattels to be used by the Client at the Facility shall be stored by the University at the Client's risk of loss, theft or damage by fire or explosion from any cause, flood, wind, storm, earthquake or acts of God, war, insurrection, riot, civil or military authority, strikes, picketing or other labour disputes, shrinkage in weight, loss in quality, or by insufficient or inadequate boxing, crating, packaging or for wear or tear or by any cause not originating in the Facility, or by any other cause. No responsibility will be assumed by the University for loss or damage caused by leakage or concealed damage or for failure to detect same. If the Client fails or neglects to remove Client Materials or its equipment, displays, goods, apparatus and chattels at the conclusion of the Event, the University may: (i) remove and store same and the same conditions for storage contained in this Subsection 5.6 shall apply, or (ii) dispose of such Client Materials, equipment, displays, goods, apparatus and chattels at the expense of the Client without any liability whatsoever for any loss or damage or otherwise.
- 5.7 If food and beverage service is required by the Client in the Facility for the Event the Client must retain the services of the Food Service Provider. If the Food Service Provider opts out of the agreement, an Outside Caterer may be engaged, subject to the approval of the University. Where an Outside Caterer is retained by the Client, it is understood by the Client that the Outside

Caterer is responsible for bringing and removing all food, beverages and supplies to and from the Facility and such Outside Caterer will not have access to any University kitchen facilities, unless otherwise provided for in this agreement. An outside caterer must provide proof of their Commercial General Liability insurance coverage, by way of providing the University of Winnipeg with a certificate of insurance naming the University of Winnipeg as an additional insured in an amount of no less than \$5,000,000 prior to the event.

6. Compliance

- 6.1 In carrying out its obligations pursuant to this Agreement, the Client shall, at all times, act strictly in accordance with all applicable laws, regulations, orders and other requirements of applicable governmental authorities, and shall strictly observe all private rights.
- 6.2 If alcohol will be served at the Event (regardless of whether it is purchased by the attendees), the Client must obtain an Occasional Liquor Permit from the Manitoba Liquor Commission with the prior approval of the University.

7. Warranty

- 7.1 Subject to Section 8, the University warrants that the Facility will be available for use by the Client on the Commencement Date. The University provides no warranty that the Facility is suitable for the intended use or as to its condition. The risk of loss of, or damage to the Client's equipment, displays, goods, apparatus and chattels and Client Materials shall remain with the Client and the University shall not be responsible for any loss or damage to same by reason of any cause whatsoever.
- 7.2 If the University is unable to meet the warranty in Subsection 7.1, the University shall, at its sole option, find a replacement facility on the University's premises or cancel the Agreement and return the Deposit to the Client.
- 7.3 This Section 7 sets forth the exclusive remedies for all claims based on failure to meet the warranty set forth in Subsection 7.1, whether a claim, however instituted, is based on contract, indemnity, warrant, tort (including negligence), strict liability or otherwise. The foregoing warranty is exclusive and in lieu of all other warranties, conditions and guarantees whether written, oral, implied or statutory. NO IMPLIED STATUTORY WARRANTY OR CONDITION OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE SHALL APPLY.
- 7.4 If the University provides University Services or other services or equipment to the Client in conjunction with this Agreement, the University makes no warranty or condition of any kind with respect to such University Services or other services or equipment including, but not limited to, a warranty or condition of merchantability or fitness for purpose. The University shall not be liable for any damage, failure or loss caused arising from such University Services, or other services or equipment and the Client hereby waives and releases the University from any such claim.

8. Force Majeure

Neither the University or the Client shall have any liability or be considered to be in breach or default of its obligations hereunder (except the Client's obligation to pay the Fee, Additional Fees or Cancellation Charges) under the Agreement to the extent that performance of such obligations is delayed or prevented, directly or indirectly, due to: (i) causes beyond its reasonable control (without its fault or negligence); or (ii) acts of God, act (or failure to act) of governmental authorities, fires, severe weather conditions, earthquakes, strikes or other labour disturbances, floods, war (declared or undeclared), epidemics, civil unrest or riot; (iii) necessary and essential construction; or (iv) arrest or seizure under legal process.

9. Insurance

Prior to the Commencement Date, the Client (Named Insured) shall provide a certificate of insurance to the University indicating that the Client has a Commercial General Liability insurance policy in effect in respect of the Facility for the duration of the Agreement in a minimum limit of \$2,000,000.00, inclusive of Bodily Injury and Property Damage, Cross Liability Clause, Contractual Liability and Unlicensed Equipment Liability. The University of Winnipeg is to be added as an Additional Insured. The Named Insured is to provide 30 days prior written Notice of Cancellation of the policy to The University of Winnipeg. The University shall not be liable for any losses, damages or claims resulting from the Client's failure to maintain such coverage.

10. Intellectual Property

The Client has no right, title or interest in any University patent, copyright, logos, insignia, trade dress, trade name or trade secret or any other intellectual property right of the University. Without the prior written permission of the University, the Client shall not use or display the names, trademarks or logos of the University for any purpose in connection with the Event or the rental of the Facility or otherwise.

11. Indemnification

The Client shall indemnify and save the University harmless from all claims, losses, damages, expenses or costs (including reasonable legal and other professional fees, costs and disbursements) whether or not such losses, damages, expenses or costs are special, consequential or arising directly or indirectly from any breach of the terms and conditions of this Agreement or its use of the Facility or the Event. For greater certainty, claims, losses, damages and expenses arising from injury to persons or destruction of property directly or indirectly arising from the use of the Facility or the Event or the provision of services or the provision or operation of any equipment or apparatus in the Facility shall be the sole responsibility of the Client and the University shall be indemnified and saved harmless in respect thereof.

12. Limitation of Liability

- 12.1 The University's total liability to the Client, on all claims of any kind, whether in contract, warranty, indemnity, tort (including negligence) strict liability, or otherwise, arising out of performance or breach of the Agreement shall not exceed the Deposit. All liability of the University under the Agreement shall terminate upon expiration of one (1) year from the Commencement Date.
- 12.2 IN NO EVENT, WHETHER AS A RESULT OF BREACH OF CONTRACT, WARRANTY, INDEMNITY, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, OR OTHERWISE, SHALL THE UNIVERSITY, ITS REGENTS, EMPLOYEES, SUBCONTRACTORS, SUPPLIERS OR AGENTS BE LIABLE FOR LOSS OF PROFIT OR REVENUES, LOSS OF USE OF EQUIPMENT OR ANY ASSOCIATED EQUIPMENT, COST OF CAPITAL, COST OF SUBSTITUTE EQUIPMENT, FACILITIES, SERVICES OR REPLACEMENT POWER, DOWNTIME COSTS, CLAIMS OF THE CLIENT'S EMPLOYEES, CUSTOMERS OR ATTENDEES FOR SUCH DAMAGES, OR FOR ANY SPECIAL CONSEQUENTIAL, INCIDENTAL, INDIRECT OR EXEMPLARY DAMAGES.

13. Termination

- 13.1 The University may terminate this Agreement at any time prior to the Commencement Date upon **five (5) days** prior written notice to the Client without any liability to the Client whatsoever, except to return the Deposit, if any.
- 13.2 The University may terminate this Agreement at any time and require the Facility to be immediately vacated, if in the sole opinion of the University: (i) there is danger to public safety; or (ii) there is a danger to the security of any University property; or (iii) the conduct of any persons at the Event or using the Facility, whether part of a staged performance or not, is actually or potentially either unlawful or otherwise offensive to public morality; or (iv) the Client is in breach of any terms or conditions of this Agreement. Upon such termination, all rights of the Client hereunder shall be at an end without any right of the Client to claim compensation or reimbursement and further, that any Fee owed or payable by the Client to the date of termination and any other costs and expenses, including but not limited to Additional Fees due under this Agreement, shall not be terminated, but shall survive the termination and shall be the full responsibility of the Client.

14. General

- 14.1 All notices herein provided for shall be addressed to the Client or the University as set out on the face of this Agreement. All notices of termination, or notices if not complied with may be the basis for termination, shall be forwarded by registered mail. Any notices so given shall be deemed to have been given as of the date when, in the ordinary course of registered mail, the said notice should have reached its destination.
- 14.2 This Agreement or any of the rights or obligations thereunder shall not be assigned in whole or in part by the Client.
- 14.3 Neither the Client, nor any of its employees, shall have the authority to enter into, incur, make, change, enlarge or modify any contract, liability or agreement, obligation, representation, guarantee, warrantee or commitment on behalf of the University.
- 14.4 This Agreement shall be binding upon the executors, administrators, heirs, successors and any permitted assigns of the Client.
- 14.5 Sections 10, 11, 12 and 14 and Subsections 2.2 and 13.2 survive any termination, cancellation or expiration of this Agreement.
- 14.6 The remedies under this Agreement are cumulative and may be exercised independently or in combination with others. No remedy is exclusive or dependent on any other remedy. The specifying of a use of a remedy under this Agreement does not limit rights to use other remedies available at law generally.
- 14.7 The failure of the University to exercise any rights under this Agreement shall not be deemed a waiver of such right or other rights.
- 14.8 This Agreement contains the entire agreement between the parties with respect to the Facility and the Event. There are no undertakings, representations or promises, express or implied, other than those contained in this Agreement.
- 14.9 This Agreement may be amended upon such terms and conditions as the parties mutually agree in writing.

14.10 This Agreement shall be construed in accordance with the laws of Manitoba as applied to transactions taking place entirely within Manitoba between Manitoba residents. Any action taken relating to this Agreement shall be commenced in the Court of Queen's Bench (Winnipeg Centre) of Manitoba.