

# AORMA Recommended - Facilities Use Agreement Handbook

## 1. Introduction

This handbook is general and is intended only to provide basic information. Your Auxiliary Organization should consult its counsel to respond to any questions regarding this Facilities Use Agreement or to assist in the use of releases and informed consents as part of your risk management process.

A Facilities Use Agreement is intended for short-term rentals of Auxiliary Organization or University rooms, auditoriums, grounds or other related facilities for a specific Event, such as a concert. The Facilities Use Agreement is a legal contract which sets forth the duties and obligations of the Auxiliary Organization and User in connection with the User's Event, which is being held in or on property owned or controlled by the Auxiliary Organization or the University.

Before determining the types of insurance to be required, you must identify some of the types of harm that could arise from the activities contemplated under the contract. When completing a Facilities Use Agreement, it is crucial to evaluate the scope of work to be performed and by whom.

## 2. Facilities Use Agreement

### A. Purpose

The *Facilities Use Agreement* is a contract in which the User agrees to abide by specific terms and conditions in order to hold a particular Event at a facility owned or controlled by an Auxiliary Organization or the University. User shall procure and maintain for the duration of the rental period insurance against claims for injuries to persons or damages to property which may arise from or in connection with the rental of the facilities and the activities of the User, User's guests, agents, representatives, employees or subcontractors.

### B. Elements

The AORMA Committee has developed a *Facilities Use Agreement* that contains the following elements:

- Identification of the parties to the Agreement, the location, date and time of the Event.
- Facility Use Fee and Deposit.

- Identification of a Responsible Party representing the User.
- The obligations the User must adhere to as a condition of using the Facility, including conduct, decorations, use restrictions and cleanup.
- An indemnification and hold harmless clause whereby the User agrees to pay the Auxiliary Organization and University for any losses it may suffer as a result of the User's use of the Facility or as a result of an accident that occurs at the Event.
- Specific insurance requirements the User must satisfy in order to use the Facility.
- A list of addenda which may be included in the Agreement as necessary.

### 3. Procedures/Strategies for Risk Management

Although the Facilities Use Agreement contains an indemnification/hold harmless clause, it should not be relied upon solely to reduce the exposure to risk. The Auxiliary Organization bears responsibility for the condition of its facilities and for conducting its activities and events in a manner that reasonably protects the health and safety of students or other participants. For this reason, the following risk control measures should be utilized in addition to the use of a release:

- Conduct a risk assessment of the program/activity/Event prior to executing the Facilities Use Agreement.
- Inspect Facilities and equipment for safety hazards frequently and take action to correct. Document actions taken.
- Train staff in emergency response procedures such as first aid and CPR.
- Train staff and participants on how to properly use facilities and equipment.
- Develop and enforce policies and procedures that minimize risk.
- Design programs that reflect the relevant safety standards of the given activity.
- Consider purchasing or requiring others to purchase appropriate insurance coverage as applicable.

### 4. Instructions

Identifying Information. Upon receipt of an application to use an Auxiliary Organization's Facility, the necessary information can be inserted into the Facilities Use Agreement. This information includes:

- The name and address of the User – *make sure this information is accurate and correct;*
- The specific Facility where the Event is to take place;
- A description of or purpose of the Event – *make sure there are enough specific details to accurately reflect what activity is taking place;* and
- The Date and Time of the Event.

Deposit and Fees. The User must pay a deposit within five business days of the Auxiliary Organization executing the Facilities Use Agreement. The User must pay the total Facility Use Fee no later than 45 days before the Event. Importantly, the User must also submit for Auxiliary Organization review and approval, all necessary insurance paperwork no later than 45 days before the Event. *Note: 45 days is the recommended timeframe only; your particular event may require that this timeframe be shortened.*

Responsible Party. The person who signs the Facilities Use Agreement on behalf of the User is deemed the “Responsible Party.” That person shall serve as the primary contact between the Auxiliary Organization and the User group. The Responsible Party is required to coordinate all Event details with the Auxiliary Organization no later than 21 days before the Event and must be in attendance at the entire Event. The Responsible Party is also charged with making sure the Event runs smoothly and safely and to assure the User adheres to the terms and conditions of the Facilities Use Agreement. *Note: 21 days is the recommended timeframe only; your particular event may require that this timeframe be shortened.*

User’s Obligations. In general, the User agrees to abide by Federal, State and local laws, as well as the rules of the Auxiliary Organization, and the University. The User also agrees that it shall not make any permanent alterations to the Facility and shall exercise care in setting up and cleanup after the Event. If the User damages the Facility, the User is responsible for paying to repair the damages. Unless otherwise agreed to in writing, the User is responsible for cleanup, including removal of garbage and recycling efforts. If for any reason the Auxiliary Organization wants to control waste removal or recycling, the Auxiliary Organization should confirm same in writing to the User – this can be done via the Addendum provisions attached to the Facility Use Agreement or in a separate writing signed by the User and the Auxiliary Organization.

No Assignment. The Agreement is not assignable or transferable, unless the Agreement is modified in writing.

Auxiliary Organization’s Right to Enter. The Auxiliary Organization maintains a right to enter the Facility during the Event for any reasonable purpose.

Indemnification and Hold Harmless. There is an indemnification and hold harmless provision in which the User agrees to waive and release any and all claims against the Auxiliary Organization, University, etc., from any liability, damages and loss related to or arising out of the Event or the use of the Facility. The exception is any loss or damage which is caused by the sole negligence or willful misconduct of the Auxiliary Organization.

Insurance requirements. User must have and maintain insurance for injuries to persons and damages to property before and throughout the Event. The User must submit the required insurance policy information to the Auxiliary Organization no later than 45 days before the Event; this is the same deadline as the payment of the Facility Use Fee. The Auxiliary Organization must review the insurance paperwork submitted by the User to confirm that it meets the requirements specified in the Facilities Use Agreement. The Auxiliary Organization must approve the insurance paperwork submitted in order for the Event to take place. Pay special attention if the User will be supplying alcoholic beverages at the Event. If so, the general liability insurance coverage must include host liquor liability coverage. If the User is using a caterer or other vendor to supply alcohol, that vendor must have liquor liability coverage. If the User intends to sell alcohol, either the User or vendor providing the alcohol for sale, must have a valid liquor sales license and liquor liability insurance covering the sale of alcohol. *Note; 45 days is the recommended timeframe only; your particular event may require that this timeframe be shortened.*

Special Events Coverage. Special events coverage may be available for an additional fee to provide the liability insurance required by this Agreement. User can obtain additional information and cost from the Auxiliary Organization.

Right to Modify. Auxiliary Organization reserves the right to modify these insurance requirements at any time without any advance notice, including limits, based on the nature of the risk, prior experience, prior events, insurer, coverage, or other special circumstances.

Reassignment of Facility. The Auxiliary Organization reserves the right to reassign the User to another Campus facility.

Termination. The Auxiliary Organization may revoke the Facilities Use Agreement if the User fails to timely comply with any pre-Event requirement, for any violation of use conditions or regulations, or at any time for misrepresentation. The Auxiliary Organization may also terminate the Facilities Use Agreement in the event of an emergency.

Entire Agreement / Modification. The Facilities Use Agreement contains all of the written provisions making up the contract between the Auxiliary Organization and the User. No oral promises or other outside agreements will have any force or effect unless they are in writing and signed by both the Auxiliary Organization and User. Therefore, the Auxiliary Organization should not make any representations to the User which are outside of the terms and conditions of the Facilities Use Agreement. For example, do not represent to the User that they will be allowed to hold their Event without timely providing the required insurance paperwork.

Addendum Provisions. Attached to the Facilities Use Agreement is a Facilities Use Agreement Addendum containing additional provisions which may be incorporated into the Facilities Use Agreement if necessary or appropriate. To be effective, the provisions must be initialed by the Auxiliary Organization and the User. The addendum provisions include:

- The Special Equipment and/or Technology needs;
- Campus Police and Security arrangements;
- Vehicle Parking / Traffic / Unloading;
- Unsupervised Minors; and
- Smoking restrictions.

Depending on the location and nature of the Event, the provisions listed in the Facilities Use Agreement Addendum should be initialed so they become incorporated into the Facilities Use Agreement. For example, if the Event is taking place at a Facility indoors then the No Smoking addenda should be initialed so it is incorporated into the Agreement.

Failure to Execute Agreement. Any User who refuses to sign the Facilities Use Agreement shall not be allowed to hold their Event in an Auxiliary Organization or University Facility. The opportunity to hold an Event at an Auxiliary Organization or University Facility is exchanged for the User's execution of the Facilities Use Agreement, which thereby obligates the User to faithfully abide by its terms and conditions. Occasionally, an User may sign the Agreement after crossing out certain portions that they do not like or adding words to modify the Agreement. This is not acceptable.

## 5. Electronic Signatures

Electronic signatures and acknowledgements can only be used if Government Code section 16.5 and California Code of Regulations section 22000 are adhered to and the User's signature and acknowledgement can be authenticated and a copy of the authentication and process can be produced upon request. It is recommended that the Auxiliary Organization utilize existing security applications and access protocol when establishing an electronic signature process.

The electronic signature or acknowledgement must be stronger than simply clicking "I Agree." It should require the full name of the User / Responsible Party that is signing along with an acknowledgement by the User / Responsible Party that by clicking / checking the subject electronic signature button, that they have read, understood and are accepting all of the terms of the Facilities Use Agreement.

If these additional electronic safeguards cannot be initiated, then the use of a paper waiver / release with a "wet" signature must be used.

Facility Use Agreements sent with an electronic signature or acknowledgement should be stored in electronic form. It is sensible to regularly backup or store waivers that are in electronic form on other media (i.e. burning to a CD) in case of hard drive failure.

## **6. Retention and Storage**

The Facilities Use Agreements and any related addenda or modifications must be stored for at least four years after the Event. It is best practices to store the Agreements and related documents by Event Date in alphabetical order by User name. Doing so greatly expedites retrieval if the Agreement is needed for a legal proceeding. If space becomes a problem, the documents may be stored electronically in lieu of hard copies, but we recommend keeping wet signatures for at least two years after the Event if possible.