

ATTACHMENT B

VCCS Facilities Use Agreement
(Third Party Single Event or Scheduled Use of College Facilities)

Last Revised – 2/26/10

Community College

Facilities Use Agreement (Third Party Single-Event or Scheduled Use of College Facilities)

This Facilities Use Agreement (this “**Agreement**”) is made as of _____, 20____, between _____ **COMMUNITY COLLEGE (the “College”)**, and _____, a Virginia [corporation][limited liability company][partnership](the “**User**”). In consideration of the mutual agreements in this Agreement and all attachments to it, the parties agree as follows:

A. Certain Basic Terms and Information:

1. Address of User: _____

2. User’s Contact Information:
Authorized Representative: _____
Phone: _____
Fax: _____
Email: _____

3. Name of Event: _____ (the “**Event**”)

4. Date and Time of Event(s): **One Time:** The date and time of the Event shall be for the hours from _____ a.m./p.m. on _____, 20____ to _____ a.m./p.m. on _____, 20____, for the event described in Paragraph A.7. below.

Recurring: At _____ a.m./p.m. on the following days/dates:
_____.

5. Facilities: The areas of the College’s campus described specifically in Paragraph B below and Exhibit A attached hereto and made a part hereof (the “**Facilities**”).

6. Event Fee: In consideration for the User’s use of the Facilities pursuant to this Agreement, the User shall pay the College the Facilities Use Fee, in the amount(s) and according to the schedule on the attached Exhibit B, by checks made payable to the College and delivered to:

_____ Community College

Attn: Vice President for Administration and Finance

7. Authorized Uses: [DESCRIBE USES WITH SPECIFICITY AND IN DETAIL HERE]

- B. Agreement:** The College hereby permits the User to use 1) on a nonexclusive basis, certain College roadways and parking areas on campus for the Event to be held on the dates and times set forth in A.4 above, and 2) certain of the College’s land for the purpose of set-up, conducting the Event, a vendor area and parking, and restoration of the Facilities to their condition prior to the Event, and such other uses as are described specifically in A.7 above. Specifically, the User shall have the right of reasonable access to the locations shown on Exhibit B attached hereto and made a part hereof, at the date(s) and times specified in paragraph A.4 above. User shall have nonexclusive access to the Facilities at the stated times solely for the Authorized Uses in A.7 above. The User’s use on the day prior to the Event shall be limited to setup activities and on the day after the Event shall be limited to cleanup/restoration activities. User agrees to accept all the Facilities in as-is condition and shall leave them in the condition received. It shall be User’s responsibility to repair and/or clean the Facilities, at User’s sole cost and expense, in order to return the same to their condition prior to the Event. The User shall be fully responsible for ensuring that the Facilities are safe for participants of the Event and that it has communicated with the College regarding what police and safety services are adequate to address all applicable laws, safety codes and regulations. The College reserves the right at all times to control all of the Facilities, areas and other resources of the College, including, without limitation, the right to relocate User into alternative, comparable space on campus, and to enforce all applicable laws, rules and regulations relating thereto. Duly authorized representatives of the College may enter the Facilities for maintenance at any time and on any occasion without any restriction whatsoever.
- C. Equipment, Services Provided by the College, and Utilities:** The College shall provide certain services in the manner and at the costs set forth on Exhibit C attached hereto and made a part hereof. In addition, the User may request the College to provide certain other equipment, services or other resources in connection with the User’s use of the Facilities. To that end, User shall request, in writing, at least thirty (30) days prior to the scheduled event for such equipment, services or other resources, the nature and quality of such desired use. To the extent that the User’s use of the Facilities will require extraordinary utility consumption, the User shall pay the College for such utility consumption (e.g., electricity) by User in the Facilities and for any equipment rentals or other usage of services or resources under this provision at the College’s standard rates. Such rates will be provided to the User upon request. To the extent that the User provides its own equipment for use at the Facilities, such use shall be subject to the prior approval of the College, and the College shall not be liable for any damage or loss to such equipment, unless such loss is caused by the gross negligence or willful misconduct of the College.
- D. User’s Responsibilities:** The User shall be responsible for obtaining and paying for any and all necessary licenses and/or royalties required by all applicable copyright laws, and for advertising and ticket printing, if any. The User shall be responsible for all of its own costs and expenses, including without limitation any

payments made to any union, guild, or artists association hired by the User for the matters covered by this Agreement. The User is responsible for paying all applicable state and federal taxes, if any, relating to User's activities under this Agreement. The User will be charged Virginia Sales Tax for any rentals or other items for which such sales tax would apply, unless a current exemption is appropriate and available to User. The User may use only the Facilities set forth in this Agreement. Under no condition shall any unauthorized person undertake repair, service or alteration any portion of a Facility without the prior written consent of the College which may be withheld in the College's sole and absolute discretion.

- E. Liability:** The User assumes any and all risk of loss, damage, or liability whatsoever which the User, the User's officers, agents, employees or invitees may sustain while using the Facilities. The College, its officers, agents and employees shall not be liable for any injury, damage or loss of personal property which occurs on or about the Facilities caused by the negligence or misconduct of the User, the User's officers, agents and employees or invitees or their use of the Facilities. The User shall defend, indemnify and hold the College harmless from any and all losses, expenses, demands, actions, suits, claims or liabilities of whatsoever nature resulting from any injury or death to any persons or any property damage related to User's use of the Facilities.
- F. Insurance:** The User shall maintain, at the User's expense, during the term of this Agreement, liability insurance in which both the User and the College, its officers, agents and employees, are named as insureds with minimum policy limits of two million dollars for personal injuries, including death, and one million dollars in aggregate for all property damage; the term of such coverage shall coincide with the term of this Agreement. The insurance policy shall contain a provision which states that it cannot be canceled except upon at least fifteen (15) days prior express written notice to all insureds. The User shall keep such insurance in place and current throughout the term of this Agreement and shall furnish the College, at least two (2) weeks prior to the Event, with copies of the policies required hereunder.
- G. Nature of this Agreement:** The parties understand that: i) this agreement is a contract and not a real property lease, ii) the relationship hereunder is that of contracting parties and not that of landlord and tenant, and iii) this Agreement does not convey an interest in real estate. As such, the College reserves the right to change the location of the Facilities or to terminate this Agreement in accordance with the terms hereof.
- H. Damages and Loss:** If the Facilities incur any loss or damage as a result of the User's use, User's negligence or willful conduct or that of the User's employees, agents or invitees, the College will repair and/or replace damaged or lost property as required to restore it to its condition before the damage or loss, and will invoice the User for the cost, due and payable upon receipt. The User is deemed to have accepted the Facilities and other College resources described here in the condition existing as of the date of this Agreement, except for only latent, undisclosed defects of which the College had knowledge.
- I. Miscellaneous:** The User cannot assign this License in whole or part without the College's express prior written consent, which consent may be withheld in the College's sole and absolute discretion. The User shall not represent or imply, in any way, that the User is affiliated with the College, and the User shall not represent or imply that the College endorses, co-sponsors or approves of the User's activities without the College's express written permission. This Agreement contains all the parties' understandings and agreements related to the User's use of the Facilities, and may be changed only by an agreement in writing signed by both parties and attached hereto. This Agreement shall be governed by the laws of the

Commonwealth of Virginia, without reference to conflict of law principles. The User is subject to all applicable state and federal laws and the College’s rules and regulations. In its performance under this Agreement, the User acts and will act as an independent contractor, and not as an agent or employee of the Commonwealth.

- J. College Rules and Regulations:** The User and its employees, agents, representatives and attendees shall comply with all applicable laws, codes, regulations, policies and procedures of the College and the Virginia Community College System, including without limitation the following – attendees at the Event are prohibited from: smoking in public buildings; possession of illegal substances; cooking or serving food, except in designated kitchen areas; possession of animals, except when required to assist disabled persons; tampering with fire system or fire safety equipment; possession of any weapon or facsimile, fireworks, or other flammable materials; disruptive, destructive or dangerous behavior; possession or consumption of alcohol in public areas, or possession or consumption of alcohol by persons under the age of twenty-one.
- K. Cancellations or Changes Made by College:** The College is not liable for any cancellation or change in location caused by events beyond the College’s reasonable control, such as acts of God or acts of the Commonwealth in its sovereign or contractual capacity. The College will close to the public, including persons who wish to attend on-campus events, if the College’s designated officials determine there is reasonable cause, such as weather emergency, power outage, water outage, civil unrest, threat to national security or any other occurrence that, in the opinion of the College’s officials, is potentially and sufficiently dangerous to persons on campus or traveling to campus. The College shall not be responsible for any costs resulting from a cancellation or delay due to weather emergency, power outage, water outage, civil unrest, threat to national security or any other occurrence that is potentially dangerous to persons on campus. Event fees are non-refundable, provided, however, that the College will make a reasonable attempt to reschedule events that have been cancelled.
- L. Entire Agreement:** This Agreement constitutes the entire agreement between the parties relating to the matters covered hereby. This Agreement terminates at the end of the term set forth in paragraph A.4 above, regardless of whether the event scheduled by the User occurs or is completed. Extensions or modifications, if any, to this Agreement, shall be made only by a written agreement between the parties.
- M. Additional Conditions (if any):** This agreement shall be contingent upon the User providing to the College the following items on or before _____, 20__:

[Insert here any applicable conditions or insert “NONE ”

- N. State Provisions:** This Agreement and the parties hereto are subject to the following additional provisions required by the Commonwealth: Because the College, as an entity of the Commonwealth of Virginia, cannot accept certain standard clauses that may appear in typical contracts between private parties, as a matter of law and policy of the Commonwealth of Virginia, the User agrees that no provision described below which

appears in any accompanying contract shall be of any force and effect against the College:

- a. a requirement that the College assume any liability for personal injury or property damage not authorized by the Virginia Tort Claims Act;
- b. any provision constituting anyone other than a duly authorized college employee as the agent of the College;
- c. a provision requiring the College to indemnify, save, and hold any person, entity or party harmless from any risk, damage, or cost whatsoever;
- d. a provision permitting or requiring the application of the law of any state other than that of Virginia in the interpretation or enforcement of the contract, including this addendum;
- e. a provision limiting the User's liability for property damage or personal injury due to fault or negligence;
- f. any requirement that the User be named as a coinsured to any insurance policy or program of self-insurance maintained by the College;
- g. any term requiring the College to abide by the rules of unions or any other non-governmental association;
- h. any term imposing personal liability upon the officer or employee who signs the contract for the College;
- i. any term that requires the College to engage in, or submit to, binding arbitration.
- j. requiring the College to withhold information from the public contrary to the requirement of the Virginia Freedom of Information Act.
- k. purporting to afford the User a remedy against the College that is not otherwise available by virtue of the sovereign immunity of the Commonwealth of Virginia, at common law, or under the United States Constitution.
- l. Requiring the College to waive legal rights that by law may only be waived by the Attorney General of the Commonwealth of Virginia.

In addition, if this Agreement is for a sum in excess of \$10,000, then the User agrees to comply with the following provisions required by the Virginia Public Procurement Act: § 2.2-4311 of the *Code of Virginia* (regarding anti-discrimination) and § 2.2-4312 of the *Code of Virginia* (regarding maintaining a drug-free workplace).

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized officials, on the dates set forth below:

COLLEGE:

_____ COMMUNITY COLLEGE

By: _____
Name: _____
Title: Vice President for Administration and Finance
Date: _____

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Last Revised – 2/26/10

USER:

By: _____

Name: _____

Title: _____

Date: _____

EXHIBITS (on separate pages):

EXHIBIT A

FACILITIES TO BE USED

[Attach or enter here the floor plan and/or specific description of the Facilities.]

EXHIBIT B

EVENT FEES

[Attach or enter here the fee structure for the Event – must include when payments are required to be made to the College.]

EXHIBIT C

SERVICES PROVIDED

The College agrees to provide the following services at the rates listed below, provided, however, that the User shall give the College at least two weeks prior written notice for the College to do so:

[Insert services and rates.]
