



## USE AGREEMENT

# xx-xxxxx

THIS AGREEMENT is made and entered into this \_\_\_ day of \_\_\_\_\_ 20\_\_\_, by and between the SPOKANE PUBLIC FACILITIES DISTRICT, a municipal corporation of the State of Washington, hereinafter referred to as "District", acting through the Arena Management Department and the Arena General Manager at West 720 Mallon Avenue, Spokane, Washington, and **LICENSEE**, whose principal place of business is located at **ADDRESS** hereinafter referred to as "Licensee".

1. **PURPOSE: EVENT**

The purpose of the Agreement is to grant permission for the use of the Spokane Veterans Memorial Arena (the "Premises") in Spokane Washington, for presenting the event(s) described as follows: **EVENT**

2. **PREMISES**

- (a) Licensee shall have the right to occupy and use the Premises for the above-described purpose. Licensee acknowledges that the following areas are not included in this Agreement: Spotlight Landing, Champions, the Arena Club, Les Schwab Meeting Rooms, areas under license to third parties, and other areas of the Premises as determined by the Arena Manager.
- (b) Licensee acknowledges it has had an opportunity to examine the Premises, facilities and equipment, and accepts the same in their condition, as is.
- (c) Licensee acknowledges that there are exclusive Arena signage sponsors. Licensee agrees not to cover, block or otherwise obscure the signage or infringe upon these agreements without specific written approval by Arena Manager.

3. **USE DATES/TIME SCHEDULE**

- (a) The Licensee shall be permitted to enter the Premises in accordance with the following schedule:

**Move in:**

**Event:**

**Move out (including all Licensee property): Immediately after conclusion of event.**

- (b) The Licensee shall relinquish all use and remove all items caused by Licensee to be used or stored on the Premises, and restore the Premises to the District no later than **TIME** on the **DAY** Day of **MONTHYEAR**.

4. **FEES**

- (a) Licensee agrees to pay the District a fee of: **RATES/FEES**; payable, when requested, by the Manager, by certified check or other form acceptable to the Manager.
- (b) Where fees are expressed as a percentage of gross ticket sales, said receipts shall include all sums from ticket sales whatsoever, with no deductions allowable for taxes, costs, or other expenses, except City admission taxes.
- (c) If Licensee fails to pay the use fee within thirty (30) days after the event date, Licensee shall pay, in addition to the use fee, a late charge of 1 1/2% per month of the outstanding fee due the District.

5. **DEPOSIT: LIQUIDATED DAMAGES FOR CANCELLATION**

- (a) Licensee agrees to pay to the District, at time of signing, a security deposit of **DEPOSIT Dollars (\$AMOUNT)** in a form acceptable to the Manager.
- (b) Said deposit shall be held by the District, without interest accruing to the Licensee, as a security deposit to secure full performance of Licensee's obligations hereunder (including payment of use fees), reimbursement for damages to the Premises, incidental expenses and liquidated damages as provided hereafter. This deposit shall not be considered as a limitation upon the District's damages.

- (c) If the Licensee cancels the event or if the District reasonably deems itself insecure because of the Licensee's apparent or actual inability to perform the Agreement as promised, the District may declare a default, and said Licensee shall pay to the District, a sum of **LIQUIDATED DAMAGES Dollars (\$AMOUNT)**, as liquidated damages for the loss of use fees; and in addition thereto Licensee shall pay all consequential damages, fees or expenses incurred by the District. The District in its sole discretion, may apply the security deposit against the above sums.
- (d) The parties agree that the damages for the District's loss of use fees are difficult to ascertain or prove. The above set forth amount of liquidated damages is not a penalty, but is a reasonable forecast of the damages that would actually be suffered by the District and just compensation for loss of use fees. This remedy is in addition to all other remedies in contract or law.

6. **MINIMUM SUPPORT PERSONNEL**

- (a) Licensee agrees to employ at its sole expense and liability, such minimum security, admission, and support personnel as designated by the District and deemed necessary by the Manager to assure safety to the patrons and premises. Licensee shall obtain the advance approval of the Manager for the use of any paid or volunteer staff. No designation or approval of personnel by the Manager shall relieve the Licensee of any obligations hereunder, including but not limited to paragraphs 20 through 26 inclusive.
- (b) Licensee acknowledges it has had an opportunity to examine the qualifications and services to be provided by any security, admissions, and support personnel, designated by the District, accepts the same, and agrees to pay for said services promptly and in full. The rates for said services are set forth in Exhibit A, is attached hereto and incorporated herein.

7. **TICKETS**

- (a) For ticketed events, Licensee agrees to utilize the exclusive ticket agent approved by the District to sell all tickets and maintain an accounting of the proceeds. All costs for ticket agent services are the sole responsibility of the Licensee.
- (b) Custody of the box office proceeds shall be with the ticket agent; PROVIDED, the District shall have first lien on said proceeds to satisfy payment of use fees, City taxes, expense for damage, cleanup or other expenses or claims, liquidated or unliquidated, which may arise as a consequence of any default, act or omission of the Licensee.
- (c) The Manager may require immediate transfer to the District from the ticket agent, of such funds as may be required to fully protect District lien rights, claims, charges or, whether liquidated or disputed, in addition to any other remedies at contract or law.
- (d) For ticketed events, the Licensee agrees to provide and allow the use of, at no cost, 50 complimentary tickets per performance by Arena Management and other Arena promotion and marketing purposes.
- (e) The Spokane Arena has in place an event ticket marketing plan called the Hot Tickets Program for all ticketed, non-hockey events held in the Arena. Program members pay the full price for all tickets. Licensee acknowledges that this program is in place and agrees to allow the program to be implemented for this event(s).
- (f) Licensee acknowledges and agrees that (i) the Arena club, suites and boxes are licensed by Arena to other Arena club, suites and boxes licensees under separate licenses and include certain special amenities and (ii) Licensee will not be entitled to any share of any revenues from the Arena club, suites and/or boxes, including without limitation from rent or food and beverage sales.
- (g) When use fees are expressed as a percentage of gross receipts, Licensee shall not issue in excess of 500 complimentary tickets or other authorizations providing free admission without prior written approval of the Manager. Such approval will not be unreasonably withheld. All complimentary tickets will be issued through the Spokane Arena Box Office at 720 West Mallon, Spokane, WA.

8. **CATERING**

- (a) The District reserves all catering rights for food and beverage service for events licensed hereunder. If catering services are desired, Licensee shall advise the Manager in advance and further information will be supplied.
- (b) Licensee acknowledges it has had an opportunity to review catering services to be provided and agrees to make all necessary arrangements, at its sole expense and liability, with the District's licensed caterer.

9. **CONCESSION AND NOVELTY RIGHTS**

All concession and novelty rights are reserved to the District. The District and its assigns, and concessionaires shall have the privilege of canvassing, selling and delivering programs, wares, novelties, food, beverages, and other merchandise during the events scheduled unless otherwise authorized by the Manager. The Licensee hereby agrees to have an intermission of at least fifteen (15) minutes during each scheduled event to allow the concessionaires selling time. Licensee agrees to a split of 65 to the Licensee and 35% to the Arena on all event merchandise sold on Spokane Arena property after sales tax revenues and seller costs. Licensee agrees to use Spokane Arena's designated concessionaire.

10. **COMPLIANCE WITH AMERICANS WITH DISABILITIES ACT**  
The District represents that the Spokane Arena is in compliance with the Americans with Disabilities Act (ADA) and all regulations there under, and that the Spokane Public Facilities District as Arena owner is responsible for the permanent building access accommodations, such as, but not limited to, wheelchair ramps, elevator standards, door width standards and restroom accessibility. The Arena is equipped with an assistive listening system that is available for use by individuals attending the Licensee's events. Licensee acknowledges it is responsible for non-permanent accessibility requirements, such as, but not limited to, seating accessibility, and auxiliary aids for the visually impaired, hearing impaired and mobility impaired.
11. **ELECTRICITY**  
Unless otherwise specified, electricity needs of the Licensee, other than for regular house lights or normal facility operations, shall be paid for by Licensee at the current rates in effect for the premises. All electrical connections must be made by a representative of the District or an electrical contractor approved in advance by the Manager at the sole expense of the Licensee. Any expense incurred by the District in enforcing this provision shall be paid by the Licensee. Equipment and services provided by Licensee must comply with all the applicable codes, regulations, and federal, state and local statutes and ordinances.
12. **WATER**  
District agrees to furnish water by means of the appliances installed for ordinary toilet or janitorial purposes, but for no other purposes, unless otherwise specifically provided for in this Agreement. Toilets, sinks and water apparatus will not be used for any purposes other than for which they are constructed. No sweepings, rubbish, rags, paper or other substances shall be thrown therein. Any damage resulting to the above on account of misuse of any nature or character whatever shall be paid by Licensee.
13. **RECORDS**  
Licensee shall keep proper financial records, in a form acceptable to the District Auditor, together with a list of the first and last tickets sold. The District shall be permitted to examine said records at any time. The Manager may have a representative in the box office to determine gross receipts from the sale of tickets for the event.
14. **VIDEO, SOUND, RECORDING, BROADCAST**  
All television, broadcast, video or sound recording rights are reserved to the District, but said privileges may be acquired by negotiation with the Manager. Any arrangements made in the exercise of rights acquired by the Licensee hereunder are at its sole expense and liability.
15. **TAXES**  
Licensee understands all paid admission events held at the Premises are subject to City and State admission taxes. The Licensee agrees to pay these and all other taxes imposed in connection with its holding or exercise of privileges under this Agreement and further agrees to indemnify the District for any failure to pay such taxes.
16. **SPONSORSHIP**  
Licensee agrees not to represent, advertise or allow others to represent or advertise that the District is sponsoring the event held at the Premises, without the written permission of the Manager and/or District Executive Director.
17. **COPYRIGHT; TRADEMARK**  
Licensee warrants, on its own behalf and on behalf of any Artist(s)/Performer(s) or any other person authorized or permitted by Licensee upon the premises, that all material presented, heard, or shown has been duly licensed or authorized by the owners of any copyright or trademark interests. Licensee further warrants that payment arrangements have been made for any licensing or royalty fees chargeable or attributable to the event. Licensee acknowledges sole responsibility for said fees and promises to pay all such claims and to indemnify and hold harmless the District, their agents and employees, for all claims, including penalties and attorneys fees assigned against or incurred by the District because of any copyright or trademark dispute.
18. **PERFORMER**  
The Licensee guarantees the appearance of named performers advertised at the event as specified. In the event an advertised performer must cancel, Licensee must place signs so indicating outside the premises entrances, must make an official announcement before the start of the program; and must make a bona fide offer of refund to any ticket holder who requests refund. The Manager and Licensee, if necessary, will determine the manner and circumstances of the refund. Licensee shall pay all refunds and expenses of refund arrangements.

19. CROWD SAFETY; ACCESS

- (a) Licensee shall utilize support personnel designated by the District and shall not admit to the Premises a larger number of persons than can safely and freely move about in the Premises. The decision of the Manager in this respect shall be final. Licensee will not permit chairs or obstacles in the passageways or fire exits in the Premises and will keep all passageways and fire exits clear at all times. Licensee will further keep clear for public use all sidewalks, grounds, entries, passages, vestibules, and abutting streets and ways of access to public utilities of the Premises except for authorized purposes.
- (b) Licensee agrees not to sell or dispose of, or permit to be sold or disposed on, any tickets for any scheduled event in excess of the official seating capacity of the Premises.
- (c) The District reserves the right to require the doors to the public seating area to be opened a minimum of one hour prior to the event. The Manager reserves the right to require a Licensee to open doors more than one hour prior to the event.

20. EQUIPMENT

- (a) Erection of any special apparatus, scaffolding, rigging, or other built-up structures is the responsibility and at the expense of the Licensee, but, in order to insure safety to performers and the public, such apparatus shall be installed according to the specifications and requirements of the City of Spokane Building Inspector and the Manager.
- (b) Use and placement of all production equipment, including but not limited to mixing consoles, lighting consoles, and other lighting or sound equipment, shall be arranged with and subject to the approval of the Manager prior to installation.

21. LAWFUL USE

Licensee agrees to familiarize itself and comply with all the laws and regulations of the United States and State of Washington, all of the ordinances of the City of Spokane, Washington, and of the rules and regulations of the District for the management of the Arena, together with all rules and regulations of the Police and Fire Departments of the City. Licensee shall be responsible for obtaining all necessary permits and licenses.

22. USE OF FLAME

The Licensee agrees that it shall not stage any act or performance in which fire, flame or pyrotechnics is involved without first having obtained the prior written permission of the Chief of the Fire Department of the City. The Licensee further agrees that it will not use any decorative materials prohibited by City ordinance, or any similar flammable or combustible materials in or about the Premises. Copies of Fire Department regulations are available upon request from the Manager.

23. CARE OF THE PREMISES

- (a) Licensee shall not injure, nor mark, nor in any manner deface the Premises or any equipment contained therein, and shall not cause or permit anything to be done whereby the Premises or equipment therein shall be in any manner injured, marred or defaced; and will not drive or permit to be driven nails, hooks, tacks, or screws into any part of the building or equipment contained therein.
- (b) No signs or posters may be attached to painted or glass surfaces by any means, including duct tape or masking tape.
- (c) No advertising or other matter shall be placed or posted in or about the Premises without the Manager's written approval.
- (d) Licensee agrees to keep the Premises and facilities clean and safe from damage by employees of Licensee or any third parties, including event patrons.
- (e) The District reserves the right to require Licensee to take such reasonable protective measures as the Manager may determine necessary to insure the preservation and protection of the Premises and District equipment.
- (f) The District reserves the right to remove from the Premises any person or persons deemed objectionable by the Manager for the reason that they may be causing a disturbance on the Premises or damage to the Premises or Arena equipment.
- (g) In the event of damage or alteration to the Premises or equipment, Licensee agrees to pay to the District, on demand, such sums needed to fully restore the Premises or equipment, or repair the damage, or replace altered or damaged portions, at the District's option. Such damage shall include crowd damage as a result of failure to maintain order.

24. INSURANCE

**Insurance requirements are detailed on the attached Exhibit C. Licensee, seven days prior to the performance of the event described in paragraph 1 shall provide to the Arena General Manager the Certificate of Insurance required in Exhibit C.**

25. INDEMNIFICATION/WAIVER.

- (a) Licensee shall indemnify and hold harmless the District, the City of Spokane, and their respective officers and employees, from and against all claims, injury, death, liability, loss, damage, cost or expenses (including reasonable attorney fees and judgments) suffered by any person or property in, upon or about the Premises as a result of acts, errors or omissions of the Licensee, its agents, employees or event patrons, or arising in connection with operations, use or occupancy of the Premises by the Licensee, its agents, employees or event patrons. Licensee shall not be responsible for (and such indemnity shall not apply to) liability, loss, damage, cost or expense arising out of the negligence or intentional misconduct of the District, the City of Spokane or its officers or employees. Licensee further agrees to waive all claims against the District, the City of Spokane and their respective agents and employees on account of any loss, damage or injury from whatever cause that may occur to it or its property in connection with the use or occupancy of the Premises, except loss, damage or injury arising out of the District's negligence or willful misconduct. The indemnity and waiver provided in this section are part of the consideration upon which this Agreement is executed.
- (b) The Licensee assumes full responsibility for equipment brought into or used in the Premises. Without limiting the obligations set forth in section (a) above, Licensee shall not engage in any act, promote or incite any behavior that results in damage or injury to or by event patrons and all persons admitted to the Premises by consent of Licensee.

26. PROPERTY

- (a) Lost property of the public discovered by the Licensee shall be properly given to the Manager who shall thereafter have full custody of such articles.
- (b) In the event property of Licensee or any third party is removed, disposed, and/or stored by the District pursuant to any provision of this Agreement (paragraphs 26, 28, 30 or 31), all costs of removal, disposal or storage shall be at the sole expense and liability of the Licensee. Licensee waives all claims or damages or destruction of its property and agrees to indemnify and hold harmless the District, from all losses, liability, or claims of any third parties.

27. INDUSTRIAL INSURANCE

Licensee agrees that all workers involved in the preparation for or presentation of the program shall be considered to be employees or agents of the Licensee and shall, in no respect or manner, be considered employees or agents of the District, for industrial insurance purposes. Licensee further agrees that, in the event of a claim for industrial benefits against the District made by one of Licensee's employees, Licensee shall indemnify and hold harmless the District from any and all damages resulting there from. Licensee hereby waives its immunity under the State Industrial Insurance Act and assumes potential liability for actions brought by its employees.

28. AGREEMENT SUSPENDED

In the event of impossibility or impracticality of performance by the District (as reasonably determined by the General Manager) because the Premises or any part is destroyed, damaged or rendered unfit for occupancy; or the Premises become "Unavailable" (as defined below), then this Agreement shall be suspended and the District shall return to the Licensee any advance payment without further liability or obligation for either party. The term "Unavailable" means, as reasonably determined by the General Manager, remodeling or construction work affecting Licensee's use of the Premises, natural disaster, strike, civil disorder, terrorist activities, curtailment of transportation facilities, health epidemic, Acts of God, war, government regulations or order (such as a declaration of a "High" or "Severe" risk of terrorist attack by the U.S. Department of Homeland Security, issuance of a travel advisory for the location of the Premises) or any other comparable condition, making it inadvisable, illegal or impossible for the Licensee to perform its obligations hereunder.

29. LICENSE; LICENSEE REMEDIES

- (a) The parties understand this agreement constitutes a revocable license and not a lease. If at any time, in the judgment of the Manager, the uses of the Premises by the Licensee are improper, illegal or unsafe, the Licensee shall both cease and desist from continuing such objectionable uses or surrender the premises forthwith upon demand of the Manager, but shall not be relieved of any other obligation under this agreement.
- (b) Recovery by the Licensee for reason for the District's unwillingness or inability to provide the premises licensed under this agreement for any reason shall be limited to return of any advance deposit. Incidental or consequential damages shall be recoverable only up to the total amount of consideration payable as rental to the District hereunder.

30. ADDITIONAL REMEDIES - DEFAULT; VACANCY

- (a) In addition to the terms of paragraph 6(c), in the event of default in any of the terms of this Agreement, or if the premises become vacant for any reason,
  - (i) This Agreement, at the option of the Manager, shall cease and terminate and the relationship of the parties shall be the same in all respects as if the term had fully expired and the District may reenter said premises by force or otherwise and/or resort to any legal proceedings; and

- (ii) The District may re-license entirely or in part the use of said premises as the agent of the Licensee and receive the use fees or expense incurred or owned by the Licensee.
- (b) At any time after default or vacancy as above stated, the District at the sole expense of the Licensee, may remove from the premises any property or item remaining thereon.

31. **HOLDING OVER**

In the event of Licensee's failure to vacate and surrender the premises in a timely manner, the District may:

- (a) Assess and collect additional fees for the time of occupancy, including move in and move out time, and;
- (b) At any time after a failure to vacate, the District may move from the Premises any property or item remaining thereon at the sole expense of the Licensee.

32. **ARBITRATION - ATTORNEY'S FEES**

All disputes related to or arising out of this Agreement, or breach thereof, shall be settled by arbitration pursuant to the rules of the American Arbitration Association. This Agreement to arbitrate shall be specifically enforceable. The prevailing party in arbitration brought under this paragraph shall be entitled to reasonable attorneys fees and costs. Any such arbitration shall be commenced and maintained in Spokane County, Washington.

33. **SEVERABILITY/NON-WAIVER/INTEGRATION**

- (a) The illegality or unenforceability of any of the provisions of this Agreement shall not render the remainder unenforceable if the base of the Agreement can still be fairly implemented.
- (b) Waiver by the District of any term of this Agreement in any specific circumstance shall not be deemed a waiver in any subsequent circumstance.
- (c) This document, with the exhibits attached hereto and incorporated herein, comprises the complete and final Agreement of the parties.

34. **PLACE OF CONTRACT**

This Agreement is deemed made in the State of Washington. Licensee consents to jurisdiction of the courts of the State of Washington and to venue in Spokane County and agrees that the laws of the State of Washington shall govern questions of construction or interpretation arising in connection with this Agreement.

35. **EFFECTIVE DATE**

This Agreement shall not be effective until signed by the Licensee, the Manager, and approved as to form by the District's Attorney. In the event approval is denied, Licensee's deposit will be refunded.

36. **TIME OF ESSENCE**

Time shall be of the essence in the payment of fees and performance of Licensee's obligations hereunder.

37. **INDEPENDENT CONTRACTOR**

Licensee is an independent contractor and not an employee of the District. No person or agency designated by the Manager pursuant to paragraphs 6, 7, 8, or 9 of this Agreement shall be deemed an agent or employee of the District.

38. **ASSIGNABILITY**

This Agreement is not assignable without the Manager's written approval.

IN WITNESS THEREOF, the Spokane Public Facilities District has caused these presents to be signed by its Arena General Manager, and the Licensee has executed the same on the date given below.

**SPOKANE PUBLIC FACILITIES DISTRICT**  
**720 West Mallon, Spokane, WA 99201**

**LICENSEE**  
**ADDRESS**

Approved: \_\_\_\_\_  
 Kevin J. Twohig, CFE  
 Arena General Manager

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

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

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

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

Fed tax ID: \_\_\_\_\_









