



## **NOTES ON USE**

1. This agreement is intended for use by a CUNY College that is licensing its pool.
2. This agreement was designed for use by outside swim clubs or other organizations that have members or individuals who've signed up for classes. See e.g., Section I.B. It may require revision if the user is a school that wants access to the pool for, e.g., swim team practice.
3. This agreement assumes that many of the swimmers will be minors. Some provisions, such as Section V (regarding lifeguards and chaperones) may need to be revised if swimmers will be adults. Users of this form should not assume that the lifeguard to swimmer ratios listed reflect current best practice and should confirm what is recommended by the American Red Cross or similar institutions.
4. Note Section IV.C, which requires Licensee to include Licensor as a released party under any waiver/release that Licensee may require of swimmers and others.
5. Note that while CUNY has alternate insurance and indemnity terms when government entities are using college facilities for classroom and meeting use, it cannot permit use of pools without insurance being in place.

**FACILITY USE LICENSE AGREEMENT - POOL**  
**(University Version)**

**THIS AGREEMENT** (this “Agreement”) dated as of this \_\_\_ day of \_\_\_\_\_, between **The City University of New York** (“Licensor”), a body corporate established and existing pursuant to Article 125 of the Education Law of the State of New York, on behalf of \_\_\_\_\_ **College** (hereinafter referred to as “College”), located at \_\_\_\_\_ and \_\_\_\_\_, a [insert organization structure, e.g., New York corporation, Delaware limited liability company, etc.] \_\_\_\_\_ with an address at \_\_\_\_\_, for itself, its successors, and/or its legal representatives (“Licensee”).

**WITNESSETH**

**WHEREAS**, Licensee desires to use the pool and associated shower and changing rooms (collectively, the “Pool”) located at \_\_\_\_\_ [address] (“Building”) on the campus of College; and

**WHEREAS**, the parties desire to enter into an agreement whereby Licensor will make the Pool available to Licensee.

**NOW, THEREFORE**, Licensor and Licensee agree as follows:

**I. FACILITIES; USE; “AS IS”**

A. Subject to the terms and conditions of this Agreement, Licensor hereby grants to Licensee, and Licensee hereby accepts from Licensor, a non-exclusive, revocable license to use the Pool on the date(s) and at the time(s) set forth on **Schedule A** annexed to and made a part of this Agreement.

B. In this Agreement the term “Members” shall mean and include Licensee’s employees, agents, representatives, and independent contractors, as well as all swimmers, athletes, students, chaperones, and other guests, participants, and members of Licensee.

C. Licensee and its Members may use the Pool for the sole purpose of swimming and diving, pre- and post-swim changing and showering, and for no other purpose.

D. Licensee’s Members must enter and exit the Building through the [describe] only.

E. Prior to Licensee’s use of the Pool, Licensee will provide Licensor with a list of Members who will be using the Pool. All persons over the age of 18 will provide a valid photo ID to be permitted entry. All Members under the age of 18 shall be accompanied by a person over the age of 18 who shall provide a valid photo ID. No more than [number] children under 18 years of age may be accompanied by one adult. Failure to provide the required identification shall result in denial of access to the to the Pool.

F. Licensee acknowledges that the College may be conducting its regular academic sessions during the dates of Pool use covered by this Agreement and that College's students, faculty, employees and agents may be present on and using part of the Pool in order to gain access to other parts of the Building.

G. Licensee agrees to accept the Pool "as is" after having inspected the Pool, or waived such inspection, and finds the Pool suitable for the use for which permission is granted herein. Licensee acknowledges and agrees that Licensor shall have no obligation to do any work in or to the Pool in order to make it suitable and ready for occupancy and use by Licensee.

H. **Add if applicable:** While using the Pool pursuant to this Agreement, Licensee's Members (as defined above) shall have the right to use the lockers in the changing room area of the Pool. Members must remove all items from lockers each time they leave the Pool. Members may not secure lockers with padlocks or otherwise except when the Member is using the Pool.

## **II. LICENSE AND OTHER FEES; SECURITY DEPOSIT**

A. Licensee shall pay Licensor a license fee and additional fees for time, space, equipment and services provided by Licensor in connection with use of the Pool, all as set forth on **Schedule B** annexed to and made part of this Agreement.

B. All fees and sums due Licensor under the terms of this Agreement shall be payable by money order, credit card, wire transfer or bank check and without any set off or deduction whatsoever. Fees are not refundable, except to the extent expressly stated in this Agreement. If any charges and fees due Licensor are not timely paid, then Licensor may, at its sole option and without notice, either: (i) terminate this Agreement and the use permitted hereunder and retain all sums previously paid to Licensor or (ii) refuse admission to the Pool until such payments have been made. Licensor's election to permit use of the Pool despite all payments not having been received, shall not constitute a waiver of any sums due, or of the date such are due, and upon any further default in payment by Licensee, Licensor shall retain any money already paid without liability on its part, and Licensee shall be and remain liable to Licensor for any balance remaining to be paid as required under this Agreement. Licensee hereby assigns said receipts and the security deposit set forth in **Schedule B** to Licensor to the extent of the amount of any outstanding charges due by Licensee under this Agreement. In the event that Licensee is in arrears for any charges or fees due Licensor, Licensee waives its right, if any, to designate the items against which payments made by Licensee are to be credited and Licensor may apply any payments made by Licensee to any items which Licensor in its sole discretion may elect irrespective of any designation by Licensee as to the items against which any such payment should be credited.

C. At the time of delivery of an executed copy of this Agreement, Licensee shall pay a security deposit as set forth on **Schedule B** as security for any damage to the Pool and for the payment of any sums required by (including but not limited to those required pursuant to Article II.D of this Agreement), and the performance of, Licensee's obligations under this Agreement. Provided Licensee has fully complied with all of its obligations under this Agreement and is not in default with respect to any part of this Agreement, the remaining balance (if any) of the security

deposit shall be returned to Licensee within thirty (30) days after the later of the last date of Pool use as set forth on **Schedule A** or the date that this Agreement is terminated or revoked.

D. Charges for additional time, space, equipment, and/or services which were not contemplated or ascertainable at the time of execution of this Agreement shall be billed at Licensor's standard rates and shall be payable promptly upon notification by Licensor that such charges are due.

E. **Time shall be of the essence with respect to all payments required pursuant to this Agreement.**

F. Licensee acknowledges and agrees that pursuant to this Agreement, Licensor has reserved the Pool for Licensee's use on the date(s) specified in **Schedule A**. In reliance thereon, Licensor has declined to pursue and/or has refused offers from others desiring to use the Pool on those dates. If Licensee desires to cancel its scheduled use of the Pool or change the date(s) thereof, or in any manner terminate this Agreement, Licensee shall provide written notice to Licensor. Irrespective of such notice, Licensor shall have the right to retain any and all fees or deposits paid or provided to Licensor pursuant to this Agreement and, further, Licensee shall be obligated to pay Licensor any remaining balance owed pursuant to this Agreement; provided, however, that if the notice is provided by Licensee to Licensor at least thirty (30) days prior to the first scheduled use of the Pool as set forth on **Schedule A**, then Licensor may, in its discretion, license the Pool to another licensee and, to the extent sufficient revenue from such alternate licensee is received, such remaining balance owed shall not be due.

### **III. EXISTING CAPACITY NOT TO BE EXCEEDED**

Licensee shall not permit entry of more than the number of persons permitted by laws, rules, regulations, and directives of federal and City and State of New York governments, courts, governmental authorities, and legislative bodies, and policies and requirements of Licensor, and the College (collectively, "Laws") applicable to the Pool. In the event that the number of persons authorized by Licensor and/or College policies or requirements is lower than the number permitted by other applicable Laws, the lower number shall take precedence. Notwithstanding the information set forth on **Schedule A**, in no event shall the number of persons allowed at and/or in the Pool exceed the existing legal capacity of the Pool, if any. The statement in this Agreement of the use of the Pool to be conducted by Licensee shall not be deemed to constitute a representation or guaranty by Licensor that such use is lawful or permissible under the certificate of occupancy for the building in which the Pool is located (each, the "Building").

### **IV. COMPLIANCE WITH LAWS/ APPROVALS/RESTRICTIONS ON USE**

A. Licensee covenants and agrees to abide by, conform to, and comply with all applicable Laws, and will not do nor allow anything to be done at or in the Pool or otherwise on the College campus during the term of this Agreement in violation of any such Laws.

B. Licensee agrees that one of the express conditions of this Agreement is that Licensee will not use nor attempt to use any part of the Pool for any purpose other than that above

specified, nor for any use or proposed use which will be contrary to applicable Laws or detrimental to the reputation of Licensor, or the College. Licensee further agrees, as an express condition of this Agreement, that if Licensor, in its sole and absolute discretion, deems any proposed or existing use to be contrary to applicable Laws or detrimental to the reputation of Licensor or the College, Licensor may immediately terminate this Agreement, and/or interrupt use of the Pool, and dismiss or cause the Members to be dismissed. Upon the exercise by Licensor of any such discretion, all rights of Licensee hereunder shall immediately terminate. In any such event, Licensor shall be entitled to retain all money paid or agreed to be paid by Licensee; and, Licensee agrees that any claim by Licensee for damages arising out of any act of Licensor, its agents, or employees, in the exercise of Licensor's discretion under this clause shall be and is hereby waived by Licensee and there shall be no other liability of any kind on the part of Licensor, and Licensor is totally released by Licensee hereby.

C. Licensee agrees to secure in advance of its use of the Pool, any and all licenses, certificates and/or permits that may be required for any permitted use and to do all other acts necessary to comply with all applicable Laws governing the use permitted herein, or otherwise applicable to the Pool and/or the College campus, including but not limited to permission from the parent(s) or legal guardian(s) of any Members under age 18. Licensee agrees to include Licensor, and the College as released parties in any waiver/release it obtains from Members and to the extent Members are minors, from their parent(s) or legal guardian(s). Upon request by Licensor, Licensee shall submit to Licensor prior to the start date set forth on **Schedule A** copies of such permits and licenses required to be obtained by Licensee.

D. Licensee covenants and agrees that it will not allow any smoking at the Pool or on the College campus. Licensee covenants and agrees that it will not offer or serve alcoholic beverages and that it will not allow any consumption of alcoholic beverages at the Pool or on the College campus.

E. Except for water in plastic containers, no food or beverages are allowed in or around the Pool, including the pool and associated shower and changing rooms. No glass containers are allowed. Licensee may not sell merchandise at the Pool or elsewhere on the College campus without the prior written consent of Licensor.

F. Licensee agrees not to do or permit anything to be done or placed at the Pool or on the College campus that will in any way create a fire hazard.

G. Licensee shall, at its own cost and expense, store and dispose of all of its garbage and waste matter in a manner that prevents the emanation of any odor and effluent and in compliance with applicable Laws.

## **V. LIFEGUARDS AND CHAPERONES**

A. Licensee shall provide Red Cross-certified lifeguards and instructors for the Pool. Licensee agrees to:

1. ensure that at least one American Red Cross-certified Lifeguarding Instructor be present on the deck at all times during each instance of Licensee’s use of the Pool;
2. provide at least one American Red Cross certified Water Safety Instructor (“WSI”) in the pool or at the edge of the pool for every one student in the pool during “Parent and Tot” classes. Licensee also shall ensure that at least one parent shall be in the water with each student in “Parent and Tot” classes;
3. provide at least one American Red Cross certified WSI in the pool or at the edge of the pool for every one student in the pool during “private” lessons;
4. provide at least one American Red Cross certified WSI in the pool or at the edge of the pool for every 8 students in the pool during group lessons;
5. provide at least one American Red Cross certified WSI in the pool or at the edge of the pool for every 8 students in the pool during “Swim Team Prep/Advance Swimmers” sessions; and
6. ensure that all required WSIs and required parents be in the pool before any students enter the pool.

B. In its sole discretion, and at any time before or during Licensee’s use of the Pool, Licensor may assign or require additional lifeguards at the cost and expense of Licensee, which cost shall be paid by Licensee promptly upon notification by Licensor, or the College of the charges therefor.

C. Licensee agrees that a determination by Licensor, or the College that lifeguards are required during Licensee’s use of the Pool is not and shall not be deemed to be an assumption by, or transfer to, Licensor, or the College of liability and that Licensee shall remain liable for the acts and omissions of Licensee and its Members, employees, agents, contractors and anyone else affiliated with Licensee or its use of the Pool.

D. Licensee shall always provide at least one adult chaperone for every three Members while at the Pool or College campus.

## **VI. INSURANCE**

A. Throughout the period of this Agreement, Licensee shall maintain commercial general liability and property damage insurance (hereinafter collectively “insurance”) through a carrier licensed to do business in New York State. Licensee shall provide Licensor with a certificate of insurance at least three (3) days prior to Licensee’s first use of the Pool. Licensee shall be required to provide Insurance coverage in no less than the following amounts:

Combined Single Limit:	Two Million Dollars (\$2,000,000.00) per occurrence for bodily injury & property damage
Aggregate:	Five Million Dollars (\$5,000,000.00)

Such insurance may be carried under a blanket policy covering the Pool and other locations of Licensee, if any, provided that (x) a certificate of insurance is issued to Licensor or (y) such a policy contains an additional insured endorsement, including a declarations page showing Licensee's liability limits under this Article VI, and, in either case, (i) naming Licensor and its Additional Insureds (as hereinafter defined) as additional insureds, (ii) specifically referencing the Pool; and (iii) guaranteeing a minimum limit available for the Pool equal to the limits of liability required under this Agreement.

B. All insurance policies required hereunder shall be endorsed to and name Licensor, the Dormitory Authority of the State of New York, the State of New York and the City of New York, as well as their respective officers and employees, as additional insureds (the "Additional Insureds").

C. To the extent not covered by insurance, Licensee shall be solely responsible for the following, as well as any other applicable insurance:

1. All taxes and remittances to proper authorities;
2. All user fees;
3. Compensation, workers' compensation, and disability insurance of all persons performing services in connection with Licensee's use of the Pool (except for the Licensor's or College's personnel) as required by New York law; and
4. Licenses and permits of every kind.

D. The obligations contained in this Article shall survive the expiration or earlier termination of the Agreement.

E. Licensee agrees that if Licensee fails to comply with the requirements of this Article, Licensor shall be entitled to terminate this Agreement and retain any and all payments made by Licensee.

## **VII. INDEMNIFICATION**

A. Licensee shall indemnify, defend and hold the Additional Insureds, and their respective officers and employees, agents and representatives, harmless against all costs and expenses, actions, lawsuits, judgments, claims, damages, liabilities, penalties, losses, fines, attorneys' fees and judgments arising out of or relating to the use of the Pool and/or this Agreement, except to the extent caused by the gross negligence or intentional misconduct of Licensor.

B. Licensee agrees to use and occupy the Pool and other facilities of the Building at its own risk and hereby releases Licensor and the Additional Insureds from all claims for any damage or injury to the full extent permitted by Law. The risk of loss of or damage to any personal property of the Licensee shall be borne by the Licensee.

C. The obligations contained in this Article shall survive the expiration or earlier termination of this Agreement.

### **VIII. DEFAULT; LICENSOR MAY CURE DEFAULTS**

A. Licensor shall have the right, in its sole discretion, to terminate this Agreement in its entirety at any time with immediate effect upon written notice to Licensee given in accordance with Article XXI of this Agreement upon in the event that Licensee defaults in the performance of any of its covenants, conditions or obligations under this Agreement, including Licensee's obligation to comply with applicable Laws.

B. If Licensee shall default in performing any covenant or condition of this Agreement, Licensor may perform the same for the account of Licensee, and if Licensor, in connection therewith, or in connection with any default by Licensee, makes any expenditures or incurs any obligations for the payment of money, such sums so paid or obligations incurred shall be deemed to be additional fees hereunder, and shall be paid by Licensee to Licensor within thirty (30) days of rendition of any bill or statement therefor accompanied by reasonable supporting documentation.

### **IX. UTILITIES**

A. Licensor agrees to provide all ordinary electricity, water and heat to the Pool, to the extent that same are currently provided to the Pool. Licensor does not guarantee that the air conditioning equipment will be in working order during the term of this Agreement.

B. Unless there is a restriction set forth on **Schedule A** attached hereto with respect to a particular Pool, Licensee shall be permitted to use any elevators currently located in the building and serving the Pool, provided that Licensor does not guarantee that the elevators will be in working order during the term of this Agreement.

C. Licensor shall not be liable to Licensee for any loss or damage or expense which Licensee may sustain or incur if either the quantity or character of electric service is changed or is no longer available or suitable for Licensee's requirements. Licensor reserves the right, upon reasonable advance notice to Licensee (which may be given in person or by telephone) (except no notice shall be needed in the event of an accident or emergency), to suspend operation of electricity, water and heating, ventilation, air conditioning service and elevator service to the Pool and the equipment related thereto at any time that Licensor, in its reasonable judgment, deems it necessary to do so for reasons such as accidents, emergencies or any situation arising at the Pool or within the College campus which has an adverse effect, either directly or indirectly, on the operation of such equipment, including without limitation, reasons relating to the making of repairs, alterations or improvements to the Pool or the College campus, and Licensee agrees that any such suspension in the operation of such equipment may continue until such time as the reason causing such suspension has been remedied and that Licensor shall not be held responsible or be subject to any claim by Licensee due to such suspension; provided, however, Licensor hereby



agrees to use commercially reasonable efforts (without the obligation to use overtime or premium-pay labor) to restore any such suspensions. Licensee further agrees that Licensor shall have not have any responsibility or liability to Licensee if operation of such equipment is prevented by a Force Majeure Event (as hereinafter defined), or by the orders or regulations of any federal, City or State of New York authority or by failure of the equipment or electric current, steam and/or water or other required power source.

D. In the event internet services are provided by Licensor to Licensee at the Pool (provided the parties agree that Licensor shall not be obligated to provide internet), Licensee acknowledges and agrees that use of such internet is at Licensee's own risk.

## **X. DAMAGE TO POOL; FORCE MAJEURE EVENTS**

A. Licensee shall take good care of the Pool and the fixtures and property located at and/or in the Pool.

B. Licensee shall not make any alterations or changes of any kind to the Pool or to anything at the Pool, nor allow any to be made. In case damage of any kind shall be done to the Pool or to the furnishings, fixtures or equipment at or in the Pool, Licensee agrees to pay, in addition to the sums mentioned above and on **Schedule B**, the amount of such damage or such amount as shall be necessary to put the Pool in as good order and condition as the same were at the commencement of this Agreement. Licensee shall not do or permit to be done at or in the Pool anything that will tend to injure, mar or in any manner deface the Pool and, further agrees not to drive or place any nails, tacks, or screws in or on the Pool. Decorations by Licensee shall only be made under the supervision and with the approval of Licensor.

C. Licensor shall not be liable for any damage to any property at or in the Pool at any time caused by water, rain, snow, steam, gas, or electricity, which may leak into, issue or flow from the pipes or plumbing work or wires, or from any part of the Building, or from any other place; nor shall Licensor be liable to Licensee, its employees, agents or Members or anyone else for any loss of, damage to, or theft of property from or at the Pool.

D. If the Pool be destroyed either wholly or in part, or damaged by fire or the elements, mob or riot, or if use of any part of the Pool or equipment, or performance of any part of this Agreement be prevented or interfered with, by strikes, government regulation, public health or safety emergency (including without limitation Pool or College campus closures, limitations on activities permitted at the College, limitations on the number of individuals that may be present at activities at the College, and similar consequences resulting from or related to COVID-19 or other public health and/or safety emergency), or any other cause beyond the reasonable control of a party (each a "Force Majeure Event") prior to or during the time for which use of the Pool is licensed, either party may, in its discretion terminate this Agreement. In the event of such a termination, Licensor shall return to Licensee any payments that may have been made to Licensor for the proportionate period of use prevented or interrupted by the Force Majeure Event except that Licensee shall remain responsible for Licensor's out-of-pocket expenses actually incurred and any non-cancelable Licensor and College obligations. Neither party shall be liable to the other for any

loss or damage to personal property, or other damage, delay, inconvenience, or annoyance arising from or because of a Force Majeure Event and each party hereby expressly waives any claims for such damages or compensation.

## **XI. REVOCATION**

In the event of a public health or safety emergency, including, without limitation, Licensor's operational needs as a result thereof, as the foregoing shall be determined in Licensor's sole discretion, or upon directive by any federal or City or State of New York government agency, Licensor may at any time revoke the license granted hereunder and/or terminate this Agreement immediately upon written notice to Licensee. In the event of revocation and/or termination by Licensor pursuant to this Article, Licensor shall refund any unused amounts paid by Licensee as a security deposit and/or the license fee, if no Pool use has occurred, or a pro rata portion of the license fee if the Pool use has commenced but has not concluded; and, Licensee agrees that any claim by Licensee for damages arising out of any act of Licensor, its agents, or employees, in the exercise of Licensor's discretion under this Article shall be and is hereby waived by Licensee and there shall be no other liability of any kind on the part of Licensor, and Licensor is totally released by Licensee hereby.

## **XII. ENTRY BY LICENSOR**

Licensor and/or its employees, officers, agents, and representatives, shall have the right at all times to enter any part of the Pool and the Building.

## **XIII. OBSTRUCTION; ACCESS**

A. Licensee agrees not to obstruct any portion of the sidewalks, entries, vestibules, halls, elevators, or ways of access to public utilities of the Pool or the Building, or to allow them to be used for any purpose other than for ingress and egress to and from the Pool and the Building.

B. Licensee shall not permit Licensee and its Members, agents, contractors and subcontractors and anyone else affiliated with Licensee or using the Pool under this Agreement to: (i) assemble, congregate or to form a line outside of the Pool or the Building or otherwise (except in the case of an occasional unanticipated line provided that notice of such forming line is given to Licensor and provided further that such line is managed by Licensee and in such case any indemnification or other obligation of Licensee under this Agreement that was otherwise limited to the Pool shall be expanded to include those areas outside of the Pool) or otherwise impede the flow of pedestrian traffic outside of the Pool or the Building or (ii) park or otherwise leave bicycles, wagons or other similar items outside of the Pool or the Building except in locations designated by Licensor from time-to-time. Licensee shall and shall require all such persons to comply with rules promulgated by Licensor from time-to-time regarding access and ingress to and egress from the Pool and the Building. Licensee acknowledges and agrees that Licensor shall be permitted to limit the means of ingress and egress to and from the Pool, the Building and the College campus, and Licensee shall be responsible for implementing any rules or restrictions on access and ingress to and egress from the Pool, the Building and College campus and ensuring compliance therewith,

by its Members, agents, contractors and subcontractors and anyone else affiliated with Licensee or using the Pool under this Agreement.

#### **XIV. END OF TERM**

On or prior to the expiration of the Term, Licensee shall have removed all of its property from the Pool and the Building and shall leave the Pool broom clean and in as good or better condition as when Licensee took possession of the Pool, wear and tear excepted. Licensee shall pay Licensor Five Hundred Dollars (\$500.00) for each day that Licensee shall have failed to do the foregoing. Payment of said sums shall not be in prejudice to any other rights available to Licensor. Licensor reserves the right to charge Licensee reasonable fees for any repairs needed above and beyond normal wear and tear upon the exit of Licensee from the Pool.

#### **XV. LABOR DISPUTES**

Licensee agrees that it shall be the distinct obligation of Licensee and of all persons connected with Licensee, including, without limitation, employees, agents, and independent contractors thereof, not to involve Licensor in any labor disputes. In the event that such a labor dispute arises, Licensor has the absolute privilege and right to cancel this Agreement and Licensee shall remain liable for all payments hereunder.

#### **XVI. ASSIGNMENT PROHIBITED**

Licensee shall not assign nor transfer this Agreement, nor any of the rights, obligations or remedies of Licensee hereunder. Any purported assignment or transfer in violation of this Article will be void.

#### **XVII. ADVERTISEMENTS**

A. Licensee shall not use any name, logo, trademark or picture of Licensor or the College in any advertisement or in any other written or oral communication without the prior written consent of Licensor, except that Licensee may provide the name and address of the College as the location for its permitted use of the Pool.

B. Licensee shall not post, exhibit, or allow to be posted or exhibited any signs, advertisements, show bills, lithographs, posters, cards or flyers of any description on any part of the Pool, or at any other location on the College campus, without prior written approval of Licensor.

## **XVIII. RELATIONSHIP OF PARTIES; LICENSOR LIMITATION OF LIABILITY**

A. Except as expressly set forth herein, neither this Agreement nor any act of the parties shall be construed as creating a partnership, joint venture or association of any kind, nor a relationship of landlord and tenant, nor any other relationship other than licensor and licensee. Licensee shall in no way represent to others, either orally, in writing, or in advertisements or promotional material of any kind that there is any relationship between Licensee on the one hand and Licensor and/or the College on the other.

B. No trustee, officer, director, employee or agent of Licensor shall be personally liable for any judgment, award or deficiency after execution thereon arising under this Agreement, and Licensee hereby waives and releases such personal liability on behalf of itself and all persons claiming by, through or under Licensee. The limitations of liability contained in this Section shall apply equally and inure to the benefit of the Additional Insureds, present and future advisors, beneficiaries, participants, representatives and their respective constituent partners, members, shareholders, trustees, heirs, successors and assigns. Notwithstanding any contrary provision in this License, neither Licensor nor the Additional Insureds shall be liable for any injury or damage to, or interference with, Licensee's business, including loss of profits, loss of rents or other revenues, loss of business opportunity, loss of goodwill or loss of use, or for any form of punitive, special or consequential damage, in each case however occurring. The foregoing shall be in addition to, and not in limitation of, any further limitation of liability that might otherwise apply. The provisions of this Section shall survive the expiration or earlier termination of the Term.

## **XIX. USE OF FURNISHINGS/EQUIPMENT**

A. Licensee shall be permitted use of the furnishings (unless excluded on **Schedule A** annexed hereto) presently existing at the Pool (the "Existing Furnishings") provided, however, that: (i) Licensee shall not sell, sublease, encumber or otherwise dispose of or move the Existing Furnishings from the Pool without Licensor's prior written consent; (ii) Licensee shall maintain the Existing Furnishings in substantially the same condition as existed on the first day that Licensee comes to use the Pool pursuant to this Agreement and **Schedule A** (the "Commencement Date") and shall surrender the Existing Furnishings to Licensee upon the expiration or termination of this Agreement in substantially the same condition as existed on the Commencement Date, reasonable wear and tear excepted. Licensee shall be responsible to reimburse Licensor for the cost to replace with a new reasonably comparable item any item of Existing Furnishings that is not returned to Licensor upon that expiration or termination of this Agreement in substantially the same condition as existed on the Commencement Date, reasonable wear and tear excepted.

B. Licensor must approve the use of any equipment by Licensee in connection with the Licensee's use of the Pool. Licensee agrees that the method of installation and operation of any such equipment shall be subject to the supervision of Licensor. Licensee shall supply a qualified operator or operators at its own expense for the operation of such equipment, unless prohibited by applicable collective bargaining or other agreements. Licensor may agree to allow such equipment to be operated by employees of Licensor, at Licensee's sole cost expense at rates established by Licensor.

C. Members are required to use bathing caps; use of goggles is strongly recommended. Members use of any additional aquatic equipment must be pre-approved by the College's Aquatic Director.

## **XX. RECORDING/BROADCASTING**

No audio or video broadcasting and/or recording of the Licensee's use of the Pool shall be allowed without the prior written consent of Licensor. Licensee agrees that the method of installation and operation of any machinery used for permitted broadcasting and recording shall be subject to the supervision of Licensor. Licensee agrees to assume responsibility for, and in accordance with Article VII (Indemnification) to defend, indemnify and save Licensor harmless from any liability from any claim or cause of action arising out of the broadcasting of the Licensee's use of the Pool or in any recording or publication of such use, or in any other manner.

## **XXI. NOTICES; CONTACT PERSONS**

A. Except as otherwise expressly provided in this Agreement, all notices, demands, requests or other communications which are required or desired to be given hereunder shall be in writing and shall be given personally or by mail through the United States Post Office, addressed to the Party as set forth at the beginning of this Agreement. Licensor hereby designates the College Vice President for Administration as the agent to receive notices intended for Licensor. A copy of all notices sent to Licensor shall also be given at the same time and in the same manner to the Office of the General Counsel, The City University of New York, 205 East 42<sup>nd</sup> Street, 11<sup>th</sup> Floor, New York, New York 10017 with a courtesy copy by email to [ogc@cuny.edu](mailto:ogc@cuny.edu). Notices shall be deemed given when received, if delivered personally, or on the third (3<sup>rd</sup>) business day after deposit with the United States Post Office, if mailed.

B. Prior to the time that Licensee first enters the Pool pursuant to this Agreement, Licensee and Licensor shall inform each other of the names, titles, email addresses and telephone numbers (including mobile numbers) of their respective representatives who shall be contacted regarding any routine administrative matters and to communicate information or events relating to the Licensee's use of the Pool. The above shall not be in lieu of any formal notice required or desired to be given under this Agreement, which notice shall be given in accordance with Article XXI.A.

## **XXII. HEALTH AND SAFETY**

A. Licensee agrees, at Licensee's sole cost and expense, to comply, and to cause its officers, directors, representatives, employees, agents, guests, invitees, performers, participants, vendors and independent contractors to comply, with both requirements and (to the extent reasonably possible) guidance issued by the federal, state and local governments and all agencies and instrumentalities thereof relating to COVID-19 or other pandemic- and health-related requirements, as such requirements may change from time to time, applicable to Licensee, the

Pool, the Building, and the College campus, as applicable, including, without limitation, with all applicable permits and health care requirements and recommendations of the New York City Department of Health and Mental Hygiene and New York State Department of Health.

B. Licensee shall comply, and shall cause all of Licensee's officers, directors, agents, representatives, and Members present at the Pool to comply, with Licensor's and College's reasonable rules and procedures (which may be updated from time to time as requirements change) on notice to Licensee, which notice shall be given by email sent to the Licensee's email address for notices: \_\_\_\_\_ ("Licensee's Email Address").

C. Each party shall notify the other (which notice shall be given to by email sent to Licensor at [\_\_\_\_\_] or to Licensee's Email Address, as applicable) promptly upon becoming aware of such party's employees, agents, independent contractors or anyone else affiliated with Licensor or Licensee, as the case may be, that accessed the Pool, Building and/or College campus and tested positive for COVID-19 or became symptomatic for COVID-19.

D. Notwithstanding the anything to contrary contained in this Agreement, in the event of Licensee's breach of the terms of this Article XXII, Licensor shall have the right to immediately cancel this Agreement upon giving written notice to Licensee (which notice shall be given by email sent to Licensee's Email Address)

### **XXIII. MISCELLANEOUS**

A. No Waiver. The failure of Licensor to insist on strict performance of any covenant or condition hereof, or to exercise any option herein contained, shall not be construed as a waiver of such covenant, condition, or option in any other instance.

B. Modifications. This Agreement may not be changed or modified except by a writing signed by Licensor and Licensee.

C. Entire Agreement. This Agreement, including Schedules A and B and all attachments and exhibits thereto, if any, contains all of the terms of the understanding between Licensor and Licensee and shall not be binding until signed by Licensor and Licensee.

D. Authorization. Licensor and Licensee represent that the persons signing this Agreement on their behalf have been duly authorized to do so.

E. Governing Law.

1. This Agreement shall be governed by and construed in accordance with the laws of the State of New York.
2. The Standard Clauses for New York State Contracts are attached to this Agreement as Appendix A and made a part hereof. Licensor and Licensee agree that if there is any conflict between the terms and provisions of Appendix A

and the other provisions of this Agreement (including all other schedules and attachments thereto), the terms and provisions of Appendix A shall govern.

**[SIGNATURES APPEAR ON FOLLOWING PAGE]**

**LICENSOR:**  
**THE CITY UNIVERSITY OF NEW YORK ON**  
**BEHALF OF \_\_\_\_\_ COLLEGE**

**By:** \_\_\_\_\_  
(signature of authorized representative)

**Name:** \_\_\_\_\_  
(print name of authorized representative)

**Title:** \_\_\_\_\_  
(print title of authorized representative)

**LICENSEE:**

**By:** \_\_\_\_\_  
(signature of authorized representative)

**Name:** \_\_\_\_\_  
(print name of authorized  
representative)

**Title:** \_\_\_\_\_  
(print title of authorized representative)

Schedules:

Schedule A – Use; Premises; Date(s)

Schedule B – License Fee and Charges

Appendix A – Standard Clauses for New York State Contracts



**SCHEDULE A**

To the Agreement dated \_\_\_\_\_ between \_\_\_\_\_, as Licensor, and \_\_\_\_\_, as Licensee.

- A. Description of Use:
- B. Schedule of Use:

Licensee agrees that the use of the Pool shall take place only on the dates and times set forth below.<sup>a</sup>

Date	Time	Location	Activity	Number of Persons Expected to be Present at Location/Maximum Number Permitted by current applicable Laws (e.g., 15/90)

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<sup>a</sup> **[NOTE TO CAMPUS COUNSEL:** In order to remain compliant with IRS regulations pertaining to tax-exempt bond financings covering many CUNY properties, the term of the license may be no more than fifty (50) days in the aggregate if the licensee is a private company, a non-profit, such as a Section 501(c)(3) entity, or the Federal government (e.g., if license is for facility use every Monday for six months, then the aggregate number of days would be 24 (assuming four Mondays per month) and would thus be acceptable, as such use does not exceed the 50-day limitation). If licensee is the State or City, or an entity thereof, then the term limitation shall not apply.]

**SCHEDULE B**

To the Agreement dated \_\_\_\_\_ between \_\_\_\_\_, as Licensor, and \_\_\_\_\_, as Licensee.

- I. License Fee, \$ \_\_\_\_\_ payable as follows:
  - \$ \_\_\_\_\_ non-refundable deposit, at time of signing the Agreement
  - \$ \_\_\_\_\_ on or before \_\_\_\_\_
  - \$ \_\_\_\_\_ balance on or before \_\_\_\_\_
  
- II. Security Deposit, \$ \_\_\_\_\_ (payable at time of delivery of a signed copy of the Agreement)
  
- III. Other charges (payable at time of delivery of a signed copy of the Agreement):
  - A. Lifeguard Services: \$ \_\_\_\_\_
    - Rate: \$ \_\_\_\_\_ per \_\_\_\_\_
    - Number of Hours: \_\_\_\_\_
    - Dates/Times: \_\_\_\_\_
  
  - B. Equipment: \$ \_\_\_\_\_
    - Types of Equipment: \_\_\_\_\_
    - Rate: \$ \_\_\_\_\_ per \_\_\_\_\_
    - Dates/Times: \_\_\_\_\_
  
  - C. Other Services: \$ \_\_\_\_\_
    - 1. Supervisory Services: \_\_\_\_\_
      - Rate: \$ \_\_\_\_\_ per \_\_\_\_\_
      - Dates/Times: \_\_\_\_\_
  
    - 2. Custodial/Housekeeping: \_\_\_\_\_
      - Rate: \$ \_\_\_\_\_ per \_\_\_\_\_
      - Dates/Times: \_\_\_\_\_
  
    - 3. \_\_\_\_\_
      - Rate: \$ \_\_\_\_\_ per \_\_\_\_\_
      - Dates/Times: \_\_\_\_\_
  
- IV. **TOTAL CHARGES:** \$ \_\_\_\_\_