

**Eastern Shore 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 **EASTERN SHORE COMMUNITY COLLEGE (the “College”)**, and _____ (the “**User**”). In consideration of the mutual agreements in this Agreement and all attachments to it, the parties agree as follows:

A. Basic Terms and Information:

1. User’s Name and Address: _____

2. Authorized Representative Name: _____

Phone: _____ Cell _____ Fax _____ Email _____

3. Event Information:

Event Name _____

Date(s) Requested _____

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

5. 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 D, by checks made payable to the College and delivered to:

Eastern Shore Community College
29300 Lankford Hwy.
Melfa, VA 23410
Attn: Workforce & Business Solutions Officer

6. Authorized Uses:

B. Agreement:

The College hereby permits the User to use, on a nonexclusive basis, 1) certain College roadways and parking areas on campus for the Event to be held on the dates and times set forth in A3 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 A6 above. Specifically, the User shall have the right of reasonable access to the locations shown on Exhibit D attached hereto and made a part hereof, at the date(s) and times specified in paragraph A3 above. User shall have nonexclusive access to the Facilities at the stated times solely for the Authorized Uses in A6 above. 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

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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 A 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 utility consumption deemed extraordinary, 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. 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 one half a million (\$500,000) dollars for personal injuries, including death, and one half a million dollars (\$500,000) 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. Any organization that maintains continuous liability insurance coverage shall provide a copy to the College at least two weeks prior to an event and the copy will remain on file until the coverage expires or the College is notified, in writing, that the coverage has been canceled.

F. 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.

G. 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.

H. Miscellaneous:

The User cannot assign this Agreement 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.

I. 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 all prohibited activities or uses as contained in Exhibit C attached hereto.

J. 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.

K. Additional Conditions (if any):

This agreement shall be contingent upon the User providing to the College the following items on or before _____, 20____:

L. 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;
- m) 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 non-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:
EASTERN SHORE COMMUNITY COLLEGE

USER:

By: _____

By: _____

Name: _____

Name: _____

Title: Director Workforce Development

Title: _____

Date: _____

Date: _____

EXHIBIT B ADDITIONAL FEE INFORMATION

Payment of Fees:

- All reservation and service fees are payable only to the College. No direct payments to College staff for services provided by the College are allowed.

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- A **non-refundable deposit of 50% of total estimated costs is required in order to guarantee any reservation.**
- **The remainder of estimated reservation fees are due at least 10 business days before the start of the reservation. All anticipated charges must be paid prior to the event.**
- Additional fees for unanticipated charges (excessive cleaning; damages; last-minute set-up requests; etc.) will be invoiced after the event and must be paid within 30 days of invoice date.
- Security deposit (if applicable) will be refunded to client within 60 days of event or receipt of full payment on final invoice, whichever is later.
- Additional hours may be allowed at pro-rated costs based on standard rates listed on *ESCC Facility Usage Reservation and Agreement Form's* Schedule of Daily Charges.
- Depending on the complexity of requested set-up, additional fees may be required.
- An administrative fee will be charged to cover personnel time for any necessary security, maintenance, set-up, break-down, cleaning, and/or equipment usage.
- No events may be scheduled to begin after 9:00 pm, and all events must be concluded (all activities cease and all guests exited from the ESCC campus) by midnight. Client will be charged \$100 per hour or part of an hour if client and all guests do not vacate premises by midnight.

Cleaning:

- Client (or designee) is responsible for minimum clean-up of the facility as follows: removal of all decorations, and cleaning up any visible food, spilled drinks, trash, etc. If this is not done, a clean-up fee will be charged to the client for any cleaning required beyond sweeping on the final invoice with such fees being treated as a "last-minute" change request (and billed accordingly). Careless or irresponsible behavior resulting in excessive clean-up services, or non-payment of charges invoiced, will result in denial of future facilities requests.
- Client may request (10 business days advance notice required) additional clean-up service at \$35.00 per hour. The estimated cost for such clean-up will be payable in advance. Excess cleaning beyond the estimated time will be charged on the final invoice. Such charges are subject to "last-minute" change request charges.
- An additional sum up to but not exceeding \$200.00 may be charged to the client's credit card for excessive cleaning requirements, damages and/or additional fees, details of which will be reported, in writing, to the client at the time the charge is made. If cleaning/damage charges exceed \$200.00, the excess will be invoiced to the client and client will have to sign a separate credit card agreement.

Late Change Requests (Includes Technology & Set up Requests):

- Change requests must be submitted in writing by the client (or designee) prior to the event using the required form. Change requests from any other party will not be acknowledged.
- Change requests submitted after the 10 business days advance notice deadline will incur a service fee

(minimum

\$35) plus a 25% late request surcharge. Change requests submitted with less than 5 business days notice cannot be guaranteed and, if accommodated, will incur a service fee (minimum \$50) plus a 50% late request surcharge. All anticipated fees for change requests must be paid at the time of request, and these payments are non-refundable (unless not accommodated).

- Last-minute change requests (less than 24 hours' notice) must be made to on-site personnel assigned to staff the event. If accommodated, such requests will incur regular service fees (minimum \$100) plus a 100% late request surcharge fee. Such fees will be included in the final invoice.

Damage:

- Damages to College property will be the responsibility of the group sponsoring the program or event. Client must pay all estimated repair costs for any damages plus a minimum 50% surcharge penalty.

Additional Services/Personnel:

- If additional services or personnel are required in the opinion of the College or at the request of the client, such as technical, custodial, security, etc., an additional charge for each service or employee will be assessed.
- ESCC will provide a certified security person to attend all events. This cost will be charged to the client in the usage agreement.

EXHIBIT C REGULATIONS

- Reservations are made on a semester-by-semester basis after completion of semester class schedules and are subject to change as priorities warrant.
- Requests should be made at least 30 days prior to the date of the program or event and, except for the Great Hall and Conference Room (WDC), will not be confirmed by the College beyond the end of the current or upcoming semester.
- The Great Hall and Conference Room in the Workforce Development Center may be reserved up to one year in advance.
- Regular weekly and monthly bookings need to be renewed at the beginning of each semester.
- The priorities for facility usage are published in the Facilities Usage Policy.
- Regardless of other classification (not-for-profit, private business, etc) all conference rentals will be charged at the Conference Rental Rate.
- Facility usage applications must be approved by the Dean of Workforce Development Services.
- Requested event usage time must include any time required for decorating, client set-up and clean-up.
- No access to the facility or grounds will be granted outside the agreed upon usage time.
- A client representative or designee must be present during the entire agreed upon usage time. All event planning is coordinated with the client or client's authorized representative or agent.
- No event may be scheduled to begin earlier than 7:30 am, and no access to College facilities will be

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granted prior to 7:00 am.

- No events may be scheduled to begin after 9:00 pm, and all events must be concluded (all activities cease and all guests exited from the ESCC campus) by midnight. Client will be charged \$100 per hour or part of an hour if client and all guests do not vacate premises by midnight.
- Once a facilities usage agreement between the College and a client (organization or individual) has been fully executed, including payment of all applicable advance deposits, such reservation cannot be cancelled by the College unless conditions or priority commitments as noted above and/or Acts of God, war or other circumstances beyond the College's control require such cancellation. In the unusual event in which the College may cancel reservation, any and all deposits will be refunded. **In the event that client violates any terms of this agreement or regulations as contained herein, the College reserves the right to cancel the event and all deposits to date will be retained by the College.**

Parking:

- Parking is allowed only in marked areas. Loading and unloading in designated areas must be arranged in advance. Absolutely no parking is permitted in the traffic circle between the two main campus buildings.

Decorations:

- No postings are permitted on doors, windows, walls, mirrors, or bathroom stalls except as approved in advance. Directional signage may be provided by the College; client signage is not permitted.
- Candles are permitted only if they are placed in a globe and flame is confined therein.
- The throwing of rice, confetti, flower petals, glitter, or litter of any kind is not permitted. Bubbles and birdseed are allowed outside only.
- ABSOLUTELY NOTHING MAY BE TAPED, STAPLED, PINNED, OR OTHERWISE AFFIXED TO THE WALLS, FOLDING WALLS, FLOOR OR CEILING IN THE BUILDING.
- Violations of rules in this section will result in fees being charged regardless of whether or not actual damage is incurred.
- Furniture may only be moved by college employees. Any furniture moved by the client or guests of the client will result in fees being charged regardless of whether or not actual damage is incurred.

Caterer:

- ESCC will hold client (not the caterer) responsible for damage to kitchen equipment as well as clean-up including: sweeping, emptying trash cans, and basic cleaning of all equipment.

DJ/Band:

- The DJ/Band must provide its own sound system. ESCC provides 30 amp electricity supply in Great Hall. Improper use of outlets will result in fees regardless of whether or not actual damage is incurred.

Tickets/Donations:

Only registered non-profit organizations may be approved for admission ticket sales.

- If approved for advance ticket sales, non-profit organizations must provide ESCC proof of their non-profit status and tax ID number at the time the contract agreement is signed.
- If approved, tickets may only be sold in advance of the event: no tickets may be sold at the door. Client agrees to limit the number of tickets available for advance sale to the number of attendees listed on contract.

Alcoholic Beverages:

- Possession or consumption of alcoholic beverages in any form shall not be permitted on College property

unless an ABC license for the event has been acquired by the organization or person responsible for the event and the College has approved of the same in advance in writing. In such cases the client assumes full liability and responsibility and will hold the College and its employees harmless.

- **Rental client must be ABC license holder and must be at least 25 years of age: client must provide picture identification, proof of age and Social Security Number.**
- The ABC license must be on file in the Office of Workforce Development at least **five** business days prior to the event or the event may be canceled without refund. Alcohol may only be consumed in the facilities covered by the license and rental agreement.
- ABC license must be posted at the event.
- **No cash sales for alcohol is allowed at any event.**
- **Client agrees to provide bartender who will tend bar at all times during the course of the event.**
- Use of alcoholic beverages will require advance payment of a security deposit.
- All alcohol must be removed at the conclusion of the event.
- No “brown-bagging,” coolers, or other means of bringing alcohol (other than furnished by the applicant) is allowed. “BYOB” is not allowed.
- Use of illegal substances (including underage use of alcoholic beverages) is absolutely forbidden.
- Violations of rules in this section or any irresponsible use of alcoholic beverages will result in fees being charged regardless of whether or not actual damage is incurred.
- Serving of alcohol is not permitted beyond 11:00pm at all events.
- ESCC will provide a certified security person to attend all events where alcohol is available: these cost will be charged to the rental client in the rental agreement.

Information Technology and Audio-Visual Equipment:

- College IT Equipment and Multimedia Carts must not be moved or unplugged under any circumstances.
- No IT equipment (laptops) or storage device (USB, CD) that is not owned by the college can be used. Special arrangements must be made to use guest or web-based IT/AV presentations.

Other:

- Smoking is not permitted in any building on the campus.
- Possession of illegal substances is prohibited.
- No cooking of food is allowed except in designated kitchen areas.
- Animals are not permitted, except when required to assist disabled persons.
- Tampering with fire system or fire safety equipment is prohibited.
- All posted Fire Marshal capacity limits must be adhered to.
- No firearms or weapons of any kind may be brought on to the ESCC campus.
- Food and drink are not allowed in the computer labs under any circumstance; food and drink may be permitted in classrooms IF prior authorization is requested and granted.
- ESCC facilities shall not be used for any program or event inconsistent with maintaining the tax-free status of the College.
- Promotional and advertising materials may not be distributed or posted on campus without prior College approval. Direct solicitation or recruitment of students, employees, or other guests of the College (including, but not limited to, distribution of event materials) is forbidden.
- Clients shall refrain from any public statements or publicity that either explicitly or implicitly suggests College approval, support, endorsement, or co-sponsorship of any activity unless specifically authorized to do so by the College.
- A statement is required from the applicant agreeing to indemnify and to hold and save the College harmless from any loss, damage, liability, expense, claim or demand that may arise or be caused in any way by use of College facilities.

Responsibility for Conduct:

- The College reserves the right to impose reasonable conditions upon the applicant to assure compliance with these regulations. The applicant, in addition to the above, must agree that:
 - Adequate safety precautions for participants and property be observed.
 - College facilities will be returned to the same condition as before the event.
 - The program or event will not unduly tax the College facilities or interfere with normal operations of the College. Noise in hallways must be controlled.
 - Furniture, equipment, etc., will not be removed from rooms.
 - Damages to College property will be the responsibility of the group sponsoring the program or event. Client must pay all estimated repair costs for any damages.
 - Any group which violates these regulations will have their reservations cancelled and/or be required to leave College property immediately (without refund of any pre-paid fees) and will be denied permission to use the facilities again.
 - ESCC disclaims any responsibility for injury to visiting minors, when the injury may have been prevented by appropriate parental supervision. In order to protect both visitors and the College, the following guidelines are in effect:
 - Minors must be under the direct supervision of a parent or another adult 18 years of age or older.
 - Minors may not be left unattended at any time. The College will not accept responsibility for injury due to lack of supervision. Events such as "Sweet 16" parties in which the majority of the attendees are intended to be minors are prohibited.