

TULANE UNIVERSITY

INDEPENDENT CONTRACTOR SERVICE AGREEMENT

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

This INDEPENDENT CONTRACTOR SERVICE AGREEMENT (this "Agreement") is effective as of the Effective Date set forth above, by and between The Administrators of the Tulane Educational Fund, a Louisiana not-for-profit corporation and 501(c)(3) tax-exempt organization, through its Reily Student Recreation Center ("Tulane") and

\_\_\_\_\_ ("Contractor") a corporation  limited liability company  partnership  natural person

with a principal place of business located at \_\_\_\_\_

\_\_\_\_\_  
Phone: \_\_\_\_\_  
Fax: \_\_\_\_\_  
Email: \_\_\_\_\_

Tulane and Contractor hereby agree as follows:

1. Services. Contractor agrees to provide the services set forth on the Statement of Work attached hereto as Exhibit A (the "Services"), and to do so according to the schedule set forth therein.

2. Compensation. In consideration for the Services and in accordance with the schedule of payment set forth in the Statement of Work, Tulane agrees to pay Contractor all undisputed amounts within sixty (60) days following satisfactory completion of the Services. Tulane shall have no obligation to pay any disputed amounts until such dispute is resolved.

3. Term and Termination. This Agreement shall terminate as of the termination date set forth in the Statement of Work, but in no event later than the completion of the Services, unless terminated sooner as set forth herein. The term of this Agreement may be extended solely by a written agreement executed by an authorized representative of Contractor and Tulane.

(a) Tulane may terminate this Agreement immediately upon written notice to Contractor in the event Contractor fails to maintain required insurance or engages in any activity that poses an immediate threat to the health or safety of Contractor's or Tulane's employees, students, invitees, agents or representatives.

(b) Tulane may terminate this Agreement in its sole discretion upon ten (10) days prior written notice to Contractor, with such termination effective as of the expiration of such period without further action by either party.

(d) Contractor may terminate this Agreement in the event of Tulane's failure to timely pay any undisputed amount due hereunder upon thirty (30) days prior written notice to Tulane, with such termination effective as of the expiration of such period without further action by either party.

4. Relationship of Parties; Independent Contractor Status. Tulane and Contractor hereby acknowledge and agree:

(a) Contractor's relationship to Tulane is that of an independent contractor, and not an agent, employee or servant. Contractor shall not represent itself or hold itself out to third parties as being the agent, employee or servant of Tulane. Contractor shall have no authority to bind Tulane or any of its administrators, officers or employees. In the ordinary course of business, Contractor may perform services for parties other than Tulane and is not precluded from doing so by this Agreement.

(b) Contractor shall perform the Services in a careful, expeditious, timely, professional and workmanlike manner, and the Services shall be performed by persons experienced in the applicable profession, trade or skill. Contractor shall perform the Services to the standards and specifications required by Tulane and Tulane shall have the right to review and evaluate the results of the Services at any time.

(c) Contractor shall have the sole and exclusive right and responsibility to control, and to determine the method and manner of, Contractor's performance of the Services. Contractor shall also be solely responsible for the training of its employees, and for providing all supplies and materials necessary to perform the Services.

(d) Contractor shall timely pay all its employees, consultants, subcontractors, vendors and agents and shall provide evidence of such timely payment upon Tulane's request.

(e) Contractor shall pay and be solely responsible for all contributions, taxes and assessments on payrolls or other charges under all applicable federal, state and local laws, including without limitation withholding from wages of its employees. Contractor shall comply with all federal, state and local laws and regulations regarding compensation, hours of work, workplace safety or other conditions of employment.

5. Ownership of Work Product and Intellectual Property. Any and all materials generated by or on behalf of Contractor while performing the Services (including, without limitation, designs, images, video, reports, analyses, and any other work product of any kind) and all intellectual property rights relating thereto ("Work Product") are and shall be the sole property of Tulane. Contractor hereby assigns to Tulane its entire right, title and interest, if any, to all Work Product, and agrees to do all acts and execute all documents, and to use its best efforts to ensure that its employees, consultants, subcontractors, vendors and agents do all acts and execute any documents, necessary to vest ownership in Tulane of any and all Work Product. This paragraph shall survive any completion, expiration or termination of this Agreement.

6. Indemnification by Contractor. Contractor shall protect, defend, indemnify and hold harmless Tulane, and each of its agents, officers, administrators, directors and employees (individually an "Indemnified Party" and collectively, the "Indemnified Parties"), from and against any and all claims, demands, actions, damages, liabilities, costs and expenses, including without limitation attorneys' fees (collectively, "Losses"), incurred by each and any Indemnified Party (i) based upon any allegation or contention that Contractor or any one of its agents, officers, directors, employees, representatives, servants, subcontractors or vendors is an employee, servant or agent of Tulane, including without limitation, claims for the payment of federal, state or local taxes or worker's compensation benefits or of contributions imposed or required under any unemployment insurance, social security and/or income tax laws or for benefits to which the employees of Tulane may be entitled, (ii) for damages, including, without limitation, bodily injury, personal injury, death, property damage, punitive damage, or other claims brought by any person, specifically including employees of Contractor or any subcontractor, arising out of or in connection with the performance of the Services, the furnishing of any materials, or by reason of Contractor and its employees, subcontractors, agents or representatives being present on Tulane's premises, whether or not caused by the concurrent fault of Tulane, or (iii) arising out of or resulting from Contractor's default, breach or non-performance pursuant to this Agreement. In the event of a claim for indemnification pursuant to this Agreement, defense counsel shall be selected jointly by Contractor and the Indemnified Party. Contractor shall have the right to control the defense and settle any claim, subject to the consent of the Indemnified Party. It is in the intent of this Agreement that Contractor will protect, defend, indemnify and hold harmless the Indemnified Parties to the maximum extent permissible by law. Contractor's indemnity obligations shall not be limited by the insurance provisions of this Agreement, as the parties intend and agree that Contractor shall be fully responsible for liabilities assumed, regardless of the presence or absence of insurance. This paragraph shall survive any completion, expiration or termination of this Agreement.

7. Insurance Requirements. Contractor shall comply with the provisions of Exhibit B attached hereto.

8. General Provisions.

(a) Compliance with Laws and Tulane Policies. Contractor shall comply, and shall ensure that its agents, officers, directors, employees, representatives, servants and vendors comply with all applicable federal, state and local laws, rules, regulations and ordinances, as well as all policies and procedures applicable to Tulane's independent contractors, in its performance pursuant to this Agreement. In particular and without limitation, Contractor will comply with all federal, state and local laws regarding equal employment opportunity and nondiscrimination, and with Tulane's Harassment Policy, a copy of which may be found on the web site of Tulane's Office of Institutional Equity at [www.institutionalequity.tulane.edu](http://www.institutionalequity.tulane.edu). Any agent or representative of Contractor who fails to comply with an applicable law, rule, regulation, ordinance or Tulane policy shall, at the request of Tulane, be removed from any work pursuant to this Agreement.

(i) FERPA. Contractor acknowledges that in the course of performing the Services, Contractor may be exposed or have access to information, the confidentiality of which is governed by the Family Educational Rights and Privacy Act ("FERPA"). Contractor agrees to use all such information only for the performance of the Services. not to disclose such information to any third party, and to otherwise comply with FERPA in all respects.

(ii) Gramm-Leach-Bliley. Contractor may be a “Service Provider” as defined in the Gramm-Leach-Bliley Act, 16 CFR 314 (“GLBA”), and therefore may be required to implement and maintain safeguards for customer information in compliance with the Safeguards Rule under the GLBA. Service Providers retained by Tulane are to implement and maintain the security, confidentiality and integrity of confidential, proprietary and protected information. Contractor is required to: 1) limit use of protected information to the business purpose of this Agreement, 2) access protected information by commercially acceptable standards only, 3) return or destroy protected information received in connection with this Agreement, and 4) maintain the confidentiality of protected information after termination of this Agreement. Contractor will at all times adhere to Tulane’s Information Security Plan and Gramm-Leach-Bliley Policy, a copy of which can be found at <http://www2.tulane.edu/privacy/policy.cfm>.

(iii) Drug-Free Workplace. Contractor shall comply in all respects with the provisions of the Drug-Free Workplace Act of 1988, and the Drug Free Schools and Communities Act amendments of 1989. Contractor will not permit the possession or use of any alcohol or illegal drug on Tulane’s premises. No employee, agent or representative of Contractor will report to work impaired or under the influence of alcohol or any illegal drug.

(b) Statutory Employer Status. Tulane shall be considered the statutory employer of Contractor’s employees who perform work under this Agreement in accordance with Louisiana R.S. 23:1031 or R.S. 23:1061. Thus Tulane is to be granted the exclusive remedy protection of Louisiana R.S. 23:1032 and Tulane shall be liable to pay workers’ compensation benefits if the immediate employer or Contractor are unable to meet their obligations under the Louisiana Workers’ Compensation statute for work performed under this Agreement. The parties agree that the recognition of statutory employer status is made pursuant to Louisiana R.S. 23:1061 and that Tulane is not the actual employer of any of the employees of Contractor. Further, Contractor and Tulane acknowledge and agree that Tulane has no control or involvement in the hiring, firing, or direct supervision or direction of any such employees.

(c) Publicity; Use of Name. Contractor may not use the name or any logo, trademark or other indicia of Tulane without the prior written consent of an authorized representative of Tulane.

(d) Notices. Any notice given pursuant or in respect of this Agreement shall be in writing and shall be deemed received (i) on the date such notice is hand-delivered to an authorized representative of the party receiving such notice, (ii) on the first business day following the date on which such notice is sent prepaid for next-day delivery by nationally-recognized overnight delivery service, or (iii) on the third business day following the date on which such notice is sent by prepaid registered or certified U.S. mail, return receipt requested. Any notice given pursuant or in respect of this Agreement shall be delivered:

If to Contractor, to the address set forth above.

If to Tulane:                    Reily Student Recreation Center  
   Tulane University  
   6823 St. Charles Avenue  
   New Orleans, LA 70118-5698  
   Attention: Michelle Ann Riley

With a copy to:                Office of the General Counsel  
   Tulane University  
   300 Gibson Hall  
   6823 St. Charles Avenue  
   New Orleans, LA 70118-5698

(e) Assignment. Neither this Agreement, nor any obligation arising hereunder, may be assigned by Contractor or Tulane without the prior written consent of the other party. Any such attempted assignment shall be null and void. For purposes of this Agreement, “assignment” shall include any subcontract or transfer (whether by operation of law or otherwise), as well as any merger, reorganization, sale of substantially all assets, or other transaction or series of transactions resulting in a change-in-control of a party in which holders of a majority of the voting equity (or those entitled to elect a majority of the ultimate managing body of the party) prior to such transaction do not continue to hold a majority of the voting equity (or the right to elect a majority of the ultimate managing body of the party) following such transaction. Contractor shall not subcontract any portion of the Services to be performed pursuant to this Agreement without the prior written consent of Tulane.

(f) *Waiver.* No waiver of any provision of this Agreement, or any right or remedy arising under any provision of this Agreement, shall be effective unless such waiver is in writing and executed by an authorized representative of the waiving party. No waiver with respect to a specific circumstance shall be deemed a waiver as to any other circumstance.

(g) *Governing Law; Venue.* This Agreement, including without limitation, any disputes arising out of or relating to this Agreement, shall be governed by the laws of the State of Louisiana, without regard to its conflict of law provisions. Contractor and Tulane hereby submit to the exclusive jurisdiction of the state and federal courts located in the State of Louisiana with respect to any legal proceedings arising out of this Agreement.

(h) *Severability.* If any provision of this Agreement is ruled invalid in an arbitral or judicial proceeding, such finding shall not affect the validity of any other provision or this Agreement as a whole, which shall remain in full force and effect.

(i) *Entire Agreement; Amendment.* This Agreement constitutes the entire agreement of Contractor and Tulane regarding the subject matter hereof, and supersedes any and all prior or contemporaneous oral or written arrangements, any and all of which are hereby made null and void. This Agreement may be amended solely by a written agreement executed by an authorized representative of Contractor and Tulane.

(j) *Survival.* The following provisions shall survive any expiration or termination of this Agreement: Paragraphs 5, 6, 7 and 8.

*[rest of this page intentionally left blank]*

IN WITNESS WHEREOF, this Agreement is executed as of the dates set forth below by the authorized representatives of the parties.

“Tulane”  
The Administrators of the  
Tulane Educational Fund

“Contractor”

Signed: \_\_\_\_\_

Signed: \_\_\_\_\_

Printed: Alison Ketterer

Printed: \_\_\_\_\_

Title: Assistant Director, Campus Recreation

Title: \_\_\_\_\_

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

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

**Exhibit A**

**Statement of Work**

**Services**

Contractor agrees to:

1. provide instruction in \_\_\_\_\_ (the “Class”) as scheduled by Tulane.
2. record, maintain and provide to Tulane accurate records of participation in the Class on a monthly basis.
3. utilize assessment tools provided by Tulane to survey student satisfaction at the conclusion of each session, class or service, as applicable, and return such assessments in original form to Tulane.

Reily Student Recreation Center agrees to:

1. process all class registration and payments.
2. provide facility space for the mutually agreed upon class days and times.

Compensation and Schedule for Payment

Tulane will pay Contractor a one-time payment equal to \_\_\_\_\_, per semester or per year.

Compensation amount and frequency will be mutually agreed upon by both the Club Sports team and the coach.

Terms of Agreement

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Other Terms

Contractor may terminate this Agreement upon thirty (30) days prior written notice to Tulane, with such termination effective as of the expiration of such period without further action by either party.

Tulane reserves the right to cancel practice due facility hours and emergencies.

Contractor agrees to provide a list of assistant instructors to Tulane University.

Contractor agrees to adhere to all Reily Center Policies, which can be found on-line at [www.reilycenter.com](http://www.reilycenter.com).

**Exhibit B**

**Insurance Requirements**

None