

USA SOFTBALL NATIONAL CHAMPIONSHIP TOURNAMENT AGREEMENT

This National Championship Tournament Agreement ("Agreement") is made and entered into as of the _____ day of _____ 2017 ("Effective Date") by and between USA Softball, Inc., an Oklahoma not-for-profit corporation, with its principal office at 2801 N.E. 50th Street, Oklahoma City, Oklahoma 73111 ("USA Softball"), the acting as and known in the Agreement as the City of Clearwater ("Host") and the **USA Softball, Florida** ("Sponsor"). Host and Sponsor are collectively referred to in the Agreement as the "Parties."

WITNESSETH:

WHEREAS, USA Softball is responsible for promoting and conducting annual national championship tournaments for each class and division of USA Softball Championship Play as set forth in USA Softball Code Article 516 (each a "National Championship Tournament"); and

WHEREAS, USA Softball has awarded to Host the right to host one or more National Championship Tournaments during the applicable Tournament Year ("The Tournament Year"); and

NOW, THEREFORE, in consideration of mutual promises and agreements herein and for other good and valuable consideration, the receipt and sufficiency of which is acknowledged, the Parties agree as follows:

1. NATIONAL CHAMPIONSHIP TOURNAMENT

- 1.1 The **USA Softball GOLD 18-Under Fastpitch** (the "Tournament") for the Tournament Year shall be held at **Eddie C. Moore Complexes**. ("Tournament Site") with competition to begin on **July 16th** (the "Tournament Start Date") and be completed by **July 22nd** (the "Tournament End Date").
- 1.2 Host and Sponsor shall abide by the terms and conditions of the bid submitted by Host for the Tournament (the "Bid"), which is herein incorporated by reference. To the extent the Bid requires Host to pay for any expense or provide any benefit of greater value, quantity or quality than the provisions of the Agreement or the USA Softball Code and USA Softball Procedural Manual, the Bid shall govern with respect to such expense or benefit; in all other respects, the terms of this Agreement and the USA Softball Code shall govern.

2. TERM OF THE AGREEMENT

- 2.1 The Agreement shall commence on the Effective Date and, unless sooner terminated as provided herein, shall terminate on the thirty-second (32nd) day after the Tournament End Date.

3. APPLICABLE GOVERNING DOCUMENTS

- 3.1 Host and Sponsor shall perform all duties and obligations required by law, statute, or regulation as Tournament host in accordance and compliance with the USA Softball Code, the USA Softball Procedural Manual, the Official Rules of Softball in effect during the Tournament as published and amended by USA Softball from time to time, the terms and conditions of this Agreement, and the terms and provisions of the Bid, each of which is hereby incorporated by reference. Any and all provisions, rules, and procedures shall be completed by the time period specified by USA Softball from time to time. The provisions of the USA Softball Code and USA Softball Procedural Manual shall control the obligations of Host and Sponsor including but not limited to Articles 111, 204, 205, 302, 303, 304, 305, 306, and 307 for the USA Softball Procedural Manual; and Articles 206, 207, 301, 302, 303, 305, 306, 307, 309, 310, 311, 316, and 317 of the USA Softball Code. USA Softball shall provide a copy of the USA Softball Procedural Manual, USA Softball Code, and the Rules to Sponsor and Host upon written request.

4. OBLIGATIONS OF THE HOST

- 4.1 Host shall provide Tournament facilities conforming to the most current USA Softball Code, USA Softball Procedural Manual, and Official Rules of Softball (the "Rules").

- 4.2** Host shall comply with USA Softball Rule book Rule 3 Section 3 regarding game balls.
- 4.3** Host shall be responsible to provide and pay for certain expenses related to the Tournament including, without limitation, each of the following:
- A. Game Fees. Host shall comply with USA Softball Procedural Manual Article 303(B) regarding game fees.
 - B. Umpire In Chief (“UIC”), Assistant UIC, Umpire Staff (collectively, “Umpires”). Host shall provide housing, two to a room, for all umpires throughout the Tournament. The Host will provide the UIC and the Assistant UIC with local transportation to and from their Hotel and the Tournament Site. Host shall provide a private dressing room and meeting facility in close proximity to the playing fields for the Umpires’ use. Host shall pay UIC a per diem and Assistant UIC a per diem throughout the Tournament, this amount is stated in Article 303 of the USA Softball Procedural Manual.
 - C. USA SOFTBALL Representative (the “Representative”). Throughout the Tournament, the Tournament Host shall provide for the Representative a single room at the hotel designated by Host as the headquarters hotel and shall provide the Representative with a vehicle for his/her exclusive use. Host shall pay the Representative a per diem this amount is stated in Article 303 of the USA Softball Procedural Manual.
 - D. USA SOFTBALL President and Executive Director. Host shall provide the USA Softball President and the USA Softball Executive Director, or their respective designee’s, complimentary housing accommodations, and local transportation equal to or exceeding the accommodations and transportation provided to the Representative throughout the Tournament.
- 4.4** Pursuant to Articles 303(C) of the USA Softball Procedural Manual, Host shall be solely responsible for all operations and all operational and administrative expenses associated with hosting and conducting the Tournament including, without limitation, the following:
- A. Field Maintenance. Host shall ensure a properly trained and equipped grounds crew is on hand and present throughout the Tournament to ensure the facilities remain clean and free from any obstructions and in compliance with the USA Softball Code, USA Softball Procedural Manual, and the Rules.
 - B. Security and First Aid. Host shall ensure properly trained and equipped security, ambulance service and emergency medical personnel are available throughout the Tournament.
 - C. Tournament Support Staff. Host shall retain sufficient personnel to perform as statistician(s), announcer(s), official scorekeepers, scoreboard attendants, ball chasers, ticket sellers, ticket collectors, and other gate crew throughout the Tournament. USA Softball may require Host to retain additional personnel whenever USA Softball determines, in its sole and absolute discretion, such additional personnel are needed.
 - D. Advertisement and Promotion. Host shall prominently advertise and promote the Tournament prior to and throughout the Tournament. Host understands and expressly agrees to prominently mention, display or indicate USA Softball in all Tournament advertising materials.
 - E. Program / Ticket Printing. No later than thirty (30) days prior to the Tournament Start Date, Host shall submit to USA Softball for approval a design copy of the Tournament program and a sample form of Tournament tickets. Title to all programs and tickets supplied to USA Softball pursuant hereto shall immediately pass to and vest in USA Softball. If USA Softball fails to notify Host within ten (10) days after its receipt of these items of a decision to reject any advertisement, graphic or text contained therein, the program and ticket materials shall be deemed approved by USA Softball for Tournament use. Host shall print a sufficient number of Tournament programs and tickets prior to the Tournament Start Date.

- 4.5** Host shall comply with USA Softball Procedural Manual Article 306 regarding Tournament awards.
- 4.6** At Tournament Check-In, Host shall obtain and collect fully signed Roster Forms from each participant who will be participating in the Tournament (and shall not allow participation unless fully signed forms have been provided in advance of the start of the Tournament). Host shall also provide, pay for and host a pre-Tournament event at which a meal is provided for at least one (1) representative of each participating team and each of the Tournament sponsor representatives, the Umpires, Host and Sponsor representatives, USA Softball Council members, representatives and commissioners, the USA Softball President and Executive Director or their designee(s), the press, and other persons invited by Host who are present at the event (the "Pre-Tournament Event"). At the Pre-Tournament Event, the Host shall provide each team representative with a copy of USA Softball's Participant Manual and, at the Pre-Tournament Event or directly after the Pre-Tournament Event, the Host shall provide each team representative with an opportunity to inspect the fields and facilities.
- 4.7** Host shall provide free admission at all Tournament games for USA Softball Council members, their spouses and immediate family upon production of identification identifying such person as a USA Softball council member. Such admitted persons shall be entitled to reserved seating and admittance to hospitality functions, but only up to a maximum of 25 reserved seats and admissions in the aggregate. For purposes of satisfying the obligations of this subsection, in addition to the applicable free admissions (which shall be unlimited in number), Host shall reserve for USA Softball's use twenty-five (25) best seated reserved tickets to each game and the same number of passes and invitations to any hospitality function hosted by Host or Sponsor in connection with the Tournament.
- 4.8** Host shall be solely responsible for all souvenir items sold at or in conjunction with the Tournament.
- A. Pre-Approval of All Souvenir Items. A sample or exemplar of all souvenir items Host proposes to sell or allow others to sell in conjunction with the Tournament shall be submitted to USA Softball at least thirty (30) days prior to the Tournament start date. Excluding those items provided for in the immediately following sentence (all of which shall require affirmative approval), if USA Softball fails to notify Host within ten (10) days after its receipt of these items of a decision to reject any such items, then as to those items that do not contain the USA Softball name, emblem or logo that were not timely rejected, those items shall be deemed approved by USA Softball for sale in conjunction with the Tournament. Pursuant to Article 310(L) of the USA Softball Code, souvenir items with the USA Softball name, emblem or logo must be affirmatively approved in advance and in writing by the USA Softball National Office prior to their use, production or resale. Host shall not sell or permit the sale of any rejected item.
- B. Souvenir Reporting. Host must comply with USA Softball Procedural Manual Article 304(I) in submitting souvenir report to USA Softball for all souvenir sales, including sales made by third-parties (if any). If Host or Sponsor execute a contract or agreement with or allow a third-party to sell any souvenir item(s) at or in conjunction with the Tournament, Host shall ensure that such contract (the "Vendor Contract") and such third party shall comply with USA Softball Procedural Manual Article 304 (I) in submitting a report which details its gross sales. Host shall provide USA Softball with copies of all Vendor Contracts prior to the Tournament Start Date.
- 4.9** Following the Tournament End Date, Host shall prepare and submit the following reports to USA Softball:
- A. Financial Report. Host must comply with USA Softball Procedural Manual Article 304(F) and 307(E)(04). Host's President, Chief Financial Officer or Chief Executive Officer and the Sponsor Commissioner shall each be jointly and severally responsible for filing the Report and shall warrant and guarantee its accuracy and completeness.
- B. Official Final Standings. Within twenty-four (24) hours after the Tournament End Date, Host shall fax or email and mail to USA Softball National Office the official, final Tournament standings of all participating teams. USA Softball Procedural Manual Article 307(E)(01).

- C. All-American Teams. Within twenty-four (24) hours after the Tournament End Date, Host shall fax or email and mail to USA Softball National Office a list of the Tournament's first (1st) and second (2nd) All-American teams for each adult division of USA Softball Championship Play. USA Softball Procedural Manual Article 307(E)(02).
- D. Tournament Highlights. Within thirty (30) days after the Tournament End Date, Host shall comply with USA Softball Procedural Manual Article 307(E)(03).
- E. Advertisement and Promotional Material. Within thirty (30) days after the Tournament End Date, Host shall submit to USA Softball copies of all photographs (i.e. team and action), news releases and statistics taken, issued or compiled during the Tournament and all materials used in advertising, promoting and publicizing the Tournament including, without limitation, at least six (6) action photographs and team pictures of the champion, runner up and first (1st) All-American teams chosen at the Tournament.
- F. Use of Tournamentusasoftball.com Host shall comply with the USA Softball Procedural Manual Article 105 (D)(14) and utilize <http://tournamentusasoftball.com/> for all Championship Finals Tournaments.

4.10 In addition to the preparation and submission requirements of the above Section 4.9, Host shall be responsible for the following:

- A. Tournament Results, Score Sheets, Entry Fees, Assessments. Host shall comply with USA Softball Procedural Manual Article 305, 307(E)(3-5). Within thirty (30) days after the Tournament End Date, Host agrees to remit to USA Softball that portion of the Entry Fee which represents the \$100-per-team (\$25-per-team for slow pitch) assessment fee due USA Softball pursuant to USA Softball Code Article 303(A) and, additionally, the \$100/\$300 per-team bid fee due and required by USA Softball's Board of Directors, as set forth in the Bid Documents and USA Softball Procedural Manual Article 303.
- B. All-American Team Statistics. Within thirty (30) days after the Tournament End Date, Host shall submit statistics to the USA Softball National Office. (USA Softball Procedural Manual Article 307 (E)(06)).

4.11 The Tournament cannot be cancelled without the written consent of USA Softball's Executive Director.

5. OBLIGATIONS OF USA SOFTBALL

- 5.1** USA Softball shall resolve questions regarding qualification or eligibility of any team or team member entered in the Tournament in accordance with the USA Softball Procedural Manual, USA Softball Code, and the Rules.
- 5.2** The USA Softball shall select the UIC and all members of the umpire staff to officiate in the Tournament. The UIC selected by USA Softball shall be in charge of all details pertaining to the officiating duties of the umpire staff during the Tournament. If an Assistant UIC is required pursuant to USA Softball Procedural Manual Article 111(C)(2)(a, b, & c), the Sponsor's regional UIC shall select and assign any Assistant UIC.
- 5.3** USA Softball understands that there may be local laws, regulations, and ordinances that the Host may have to abide by that could ultimately affect the play of the tournament. Host shall make USA Softball aware of all such laws, regulations, and ordinances as soon as possible so they may be discussed with all parties to determine a way to properly complete the tournament. In conducting the tournament, USA Softball shall endeavor to comply with all laws, regulations, and ordinances that apply to tournament play.

6. OBLIGATIONS OF THE SPONSOR

- 6.1** Sponsor guarantees Host's complete and faithful performance of each and every obligation of Host contained or referenced in the Agreement or Bid. Accordingly, Sponsor shall be jointly and severally liable for the performance of Host's liabilities and obligations arising under or in connection with the

Agreement or Bid. In addition to all other available remedies and as specified in USA Softball Procedural Manual Article 305(B), if Host or Sponsor fails to file any report or remit any payment when due under this Agreement, Sponsor will be barred from bidding to host or sponsor any USA Softball tournaments until: (i) all monies and reports required under the Agreement are received by USA Softball; (ii) all monies owed under the Agreement are written off by the USA Softball Board of Directors; or (iii) the Sponsor Commissioner is replaced.

7. SPONSORSHIPS / MARKETING AGREEMENTS

- 7.1 Neither Host nor Sponsor may enter into any sponsorship or marketing agreement for purposes of, affecting or relating to any National Championship Tournament without the prior, written approval of the USA Softball Executive Director.
- 7.2 USA Softball national sponsors shall have the right and opportunity to market their goods and services at the Event. Any marketing or sponsorship fees charged to USA Softball national sponsors and relating to the event shall be non-discriminatory.

8. USA SOFTBALL/SPONSOR INSURANCE REQUIREMENTS

- 8.1 **Commercial General Liability Insurance** coverage, including but not limited to, premises operations, products/completed operations, products liability, contractual liability, advertising injury, personal injury, death, and property damage in the minimum amount of \$1,000,000 (one million dollars) per occurrence and \$2,000,000 (two million dollars) general aggregate.
- 8.2 **Commercial Automobile Liability Insurance** coverage for any owned, non-owned, hired or borrowed automobile is required in the minimum amount of \$500,000 (five hundred thousand dollars) combined single limit.
- 8.3 Unless waived by the State of Florida, statutory **Workers' Compensation Insurance** coverage in accordance with the laws of the State of Florida, and **Employer's Liability Insurance** in the minimum amount of \$100,000 (one hundred thousand dollars) each employee each accident, \$100,000 (one hundred thousand dollars) each employee by disease and \$500,000 (five hundred thousand dollars) aggregate by disease with benefits afforded under the laws of the State of Florida. Coverage should include Voluntary Compensation, Jones Act, and U.S. Longshoremen's and Harbor Worker's Act coverage where applicable. Coverage must be applicable to employees, contractors, subcontractors, and volunteers, if any.

9. EARLY TERMINATION

- 9.1 If at any time either Host or Sponsor fails to perform or is in breach of any obligation imposed by the USA Softball Code, the Rules, the Bid or the Agreement, USA Softball may serve notice on Host and Sponsor specifying the nature of the breach. If Host and/or Sponsor do not cure the breach immediately to the complete satisfaction of USA Softball, USA Softball may serve a Notice of Termination of this Agreement, which shall be effective upon mailing, and may then cause the Tournament to be relocated.
- 9.2 Host and Sponsor acknowledge and agree that USA Softball has relied on the full and complete performance of Host and Sponsor under the Agreement and early termination of the Agreement would cause immeasurable and irreparable harm to USA Softball. As a consequence thereof, Host and Sponsor agree to forfeit the Tournament Guarantee, as provided for in the USA Softball Code, USA Softball Procedural Manual, and the Bid, if the Agreement is terminated for any reason prior to the Tournament End Date.
- 9.3 Nothing in this Article shall be deemed a restriction upon USA Softball's rights to enforce any other remedies specified in the Agreement and to seek any and all available legal or equitable relief, as well as recovery of all expenses, including but not limited to reasonable attorney's fees incurred in enforcing its rights under the Agreement.

10. INDEMNITY / HOLD HARMLESS

- 10.1** Subject to the limitations set out in § 768.28, Florida Statutes, Host and Sponsor shall defend, indemnify and hold USA Softball harmless from and against any and all loss or liability which in any way, directly, indirectly or allegedly arises out of or relates to: (i) the Tournament; (ii) a breach of any of Host's or Sponsor's obligations under this Agreement; or (iii) any misrepresentation of fact or breach of any warranty made by Host or Sponsor in or in connection with this Agreement. However, the Host shall not be liable and shall not defend, indemnify or hold USA Softball harmless from and against any loss or liability which in any way directly or allegedly arises out of or relates to any of the obligations incurred by USA Softball pursuant to section 5 of this Agreement, nor any loss or liability caused solely by the acts or omissions of Sponsor. This indemnification shall not be construed to be an indemnification for the acts or omissions of third parties, independent contractors or third party agents of the Host. This indemnification shall not be construed as a waiver of Host's sovereign immunity, and shall be interpreted as limited to only such traditional liabilities for which Host could be liable under the common law interpreting the limited waiver of sovereign immunity. Any claims against Host must comply with the procedures found in §768.28, Florida Statutes. In order to comply with the requirements of §166.241, Florida Statutes, and Article VII, section 10 of the Florida Constitution, the value of this indemnification is limited to the lesser of the amount payable by either party under the substantive provisions of this Agreement, or the limitations of §768.28, Florida Statutes. In addition, this indemnification shall be construed to limit recovery by the indemnified party against Host to only those damages caused by Host's sole negligence, and specifically not include any attorney's fees or costs associated therewith.

11. NOTICES

- 11.1** All notices or demands required to be made or permitted under the Agreement shall be in writing and shall be deemed served when deposited in the United States mail as postage certified mail, return receipt requested, with sufficient postage prepaid thereon and addressed as provided in the first paragraph of the Agreement or to such other address as each party may from time to time designate in writing

12. REPRESENTATIONS AND WARRANTIES OF HOST AND SPONSOR

- 12.1** Sponsor represents and warrants that as of the Effective Date, it is a member of USA Softball in good standing. Host and Sponsor each represent and warrant that it understands that USA Softball has made no representation, warranty or guarantee regarding any fact or condition which may affect the Tournament's financial success including but not limited to any representation, warranty or guarantee regarding the number of teams which may participate in the Tournament, Tournament attendance, gate receipts, concessions or revenue for souvenir sales. Host and Sponsor knowingly and willingly assume all risks associated with the Tournament's financial success and understand that the Tournament Guarantee is fully earned as of the Effective Date and is non-refundable.
- 12.2** The Tournament Guarantee and any other sums due USA Softball (other than the \$100-per-team Entry Fees) will be invoiced to the Host on the January 1st of the year of the Tournament (or as soon as practicable thereafter) and the invoiced sums will be due and payable within 30 days of the invoice date.

13. MISCELLANEOUS

- 13.1** The Agreement contains and constitutes the entire agreement between the Parties and supersedes any prior agreements between the Parties, written or oral, with respect to the subject matter hereof.
- 13.2** The provisions of the Agreement are severable and the invalidity of one or more provisions herein shall not have any effect upon the validity or enforceability of any other provision.
- 13.3** Neither this Agreement nor the Bid may be amended, modified, rescinded or revoked except by written agreement executed by USA Softball, Host and Sponsor.

- 13.4** USA Softball may assign any rights or benefits accruing to it or delegate any of its responsibilities or obligations under the Agreement to a subsidiary, affiliate or related entity of USA Softball upon thirty (30) days written notice to Host. Such assignment or delegation shall not require prior written consent of Host or Sponsor. Neither Host nor Sponsor shall assign any benefits or delegate any obligations under the Agreement without express, prior written consent of USA Softball.
- 13.5** The rights and remedies of the Parties herein specified shall be cumulative and not exclusive of any other rights and remedies herein provided or allowed by law.
- 13.6** If any party commences legal action or arbitration alleging a violation of the Agreement, or seeking to enforce, construe, modify or interpret the Agreement, or any provision herein, the non-prevailing party shall, to the extent permitted by applicable law, pay all costs and reasonable attorneys' fees incurred by the prevailing party in connection with such action.
- 13.7** Articles 3, 4, 6, 7, 8, 9, 10, 12 and 13 of this Agreement shall survive any termination or expiration of the Agreement.
- 13.8** Any updates to USA Softball's Code, Procedural Manual, Technical Manual or Official Rules of Softball which may render outdated the particular references herein to sections or subsections of those documents shall be automatically deemed to reference the newly updated or newly renumbered section or subsection of the applicable document.
- 13.9** The Agreement shall be binding on the Parties and inure to the benefit of USA Softball, its successors and assigns.
- 13.10** Any waiver by a party of any breach of the Agreement shall not operate as or be construed as a waiver of any other breach of such provision or of any other provision of the Agreement. Any waiver must be in writing. Failure to insist upon strict adherence to any term of the Agreement on one or more occasions shall not be considered a waiver or deprive such party of the right thereafter to insist upon strict adherence to that term or any other term of the Agreement.
- 13.11** The Agreement shall be governed by interpreted and enforced in accordance with the laws of the State in which the Tournament Site is located, regardless of any contrary conflict of laws provisions. USA Softball, Host and Sponsor each agree that any action arising out of the Agreement shall be litigated under the laws of the State in which the Tournament Site is located with any state court action to be brought in the applicable state of federal district in which the Tournament Site is located, to the exclusion of all other courts, venues or jurisdictions. Nothing herein shall limit a party's right to remove an action from state court to federal court, pursuant to applicable law and rules. USA Softball, Host and Sponsor agree to submit to the jurisdiction of such courts, after service of process in accordance with applicable law.

USA Softball, Host and Sponsor agree to submit to the jurisdiction of such courts, and that service of process by certified mail, return receipt requested, at the addresses set forth in the Agreement shall be sufficient to confer such courts in personam jurisdiction over USA Softball, Host and Sponsor.

IN WITNESS WHEREOF, USA Softball, Host and Sponsor have executed the Agreement in triplicate copies, each of which shall be deemed an original, effective as of the Effective Date.

USA Softball, Inc.

Craig Cress, Executive Director

Countersigned:

Host
City of Clearwater, Florida

George N. Cretekos
Mayor

By: _____
William B. Horne II
City Manager

Approved as to form:

Attest:

Matthew M. Smith
Assistant City Attorney

Rosemarie Call
City Clerk

Sponsor
USA Softball Florida

Name, Title