

## FACILITIES USE AGREEMENT ADDENDUM

(Member as Licensee)

**THIS ADDENDUM** (“Addendum”) is entered into this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ between \_\_\_\_\_, a \_\_\_\_\_ (“**LICENSOR**”) and \_\_\_\_\_, (“**LICENSEE**”), a member of The Texas A&M University System (“**A&M SYSTEM**”) and an agency of the State of Texas, for the purpose of amending and supplementing a \_\_\_\_\_ (the “Agreement”) dated \_\_\_\_\_ governing the use of space located at \_\_\_\_\_ (the “Licensed Space”).

Certain standard clauses that may appear in the Agreement cannot be accepted by **LICENSEE** because of its status as an agency of the State of Texas, and other terms require amendment or supplementation. In consideration for the convenience of using the Agreement instead of negotiating a separate agreement, the parties agree that the Agreement is amended in accordance with this Addendum.

1. Conflicting Language. To the extent the language in this Addendum is in conflict with any language in the Agreement, the language in this Addendum will control.

2. Inapplicable Provisions. None of the provisions listed below, if they appear in the Agreement, will have any effect or be enforceable against **LICENSEE**:

A. Requiring **LICENSEE** to maintain any type of insurance either for **LICENSEE**'s benefit or for **LICENSOR**'s benefit, since **LICENSEE** is self-insured.

B. Renewing or extending the initial agreement term or automatically continuing or renewing the original agreement term.

C. Requiring or stating that the terms of the Agreement will prevail over the terms of this Addendum in the event of conflict.

D. Requiring the application of the laws of any state other than Texas in interpreting or enforcing the Agreement, or resolving any dispute under the Agreement. The Agreement will be construed and enforced in accordance with the laws of the State of Texas.

E. Releasing **LICENSOR** or any other entity or person from its legal liability, or disclaiming or limiting liability, for unlawful or negligent conduct or failure to comply with any duty recognized or imposed by applicable law.

F. Requiring any total or partial compensation or payment for lost profit, consequential, punitive or liquidated damages by **LICENSEE**.

G. Changing the time period within which claims can be made or actions can be brought under the laws of the State of Texas.

H. Granting control of litigation or settlement to another party;

I. Binding **LICENSEE** to any arbitration, to the decision of any arbitration board, commission, panel or other entity, or to any specific dispute resolution process.

J. Obligating **LICENSEE** to pay costs of collection or attorneys' fees.

K. Waiving, disclaiming, or limiting any rights, remedies, requirements, processes, warranties, exemptions, privileges, or immunities available to **LICENSEE** under Texas law.

L. Requiring **LICENSEE** to indemnify **LICENSOR** except to the extent such indemnity is permitted by the Constitution and the laws of the State of Texas.

M. Subjecting any property of **LICENSEE** to a statutory, contractual, or constitutional lien.

3. Confidentiality. As an agency of the State of Texas, **LICENSEE** is subject to the Texas Public Information Act, Chapter 552 of the Texas Government Code. To the extent the Agreement places any limits or restrictions on the disclosure of information that is or may be deemed by **LICENSOR** to be confidential, **LICENSEE**'s compliance with the terms of the Public Information Act will not constitute a default under the Agreement.

4. Entire Agreement. The Agreement, as amended by this Addendum, constitutes the entire agreement between the parties and may not be waived or modified except by written agreement between the parties.

5. Authority. **LICENSOR** warrants and represents that it is duly organized, validly existing and in good standing under the laws of the state of its formation, and is duly authorized to conduct business in the State of Texas, that it has all necessary power and has received all necessary approvals to execute and deliver the Agreement, and the individual executing the Agreement on behalf of **LICENSOR** has been duly authorized to act for and bind **LICENSOR**.

6. Publicity. **LICENSOR** must not use **LICENSEE**'s name, logo or other likeness in any press release, marketing materials, or other public announcement without receiving **LICENSEE**'s prior written approval.

7. Compliance With State and Federal Law

A. Accessibility. In signing the Agreement, **LICENSOR** certifies that **LICENSOR** will comply with the ADA Accessibility Guidelines ("ADAAG")

promulgated under The Americans with Disabilities Act of 1990, Public Law 101-336, 42 U.S.C. § 12181 et seq.

B. Child Support. **LICENSOR** expressly acknowledges that a child support obligor who is more than 30 days delinquent in paying child support and a business entity in which obligor is a sole proprietor, partner, shareholder, or owner with an ownership interest of at least 25 percent is not eligible to receive payments from state funds under a contract to provide property, materials, or services until all arrearages have been paid or the obligor is in compliance with a written repayment agreement or court order as to any existing delinquency. Under Section 231.006, Texas Family Code, **LICENSOR** certifies that the individual or business entity named in the Agreement is not ineligible to receive payment from the state and acknowledges that the Agreement may be terminated and payment may be withheld if this certification is inaccurate.

C. Debts or Delinquencies. Pursuant to Section 2252.903, *Texas Government Code*, **LICENSOR** agrees that any payments owing to **LICENSOR** under the Agreement may be applied directly toward certain debts or delinquencies that **LICENSOR** owes the State of Texas or any agency of the State of Texas regardless of when they arise, until such debts or delinquencies are paid in full.

D. Franchise Tax Certification. If **LICENSOR** is an entity subject to the Texas Franchise Tax, **LICENSOR** certifies that it is not currently delinquent in the payment of any Franchise Taxes due under Chapter 171 of the Texas Tax Code, or that it is exempt from the payment of such taxes, or that it is an out-of-state corporation or limited liability company that is not subject to the Texas Franchise Tax, whichever is applicable.

E. Debarment. **LICENSOR** represents and warrants, to the best of its knowledge and belief, that neither **LICENSOR** nor any of its Principals (“Principal” means an officer, director, owner, partner, or a person having primary management or supervisory responsibilities within a business entity) is presently debarred, suspended, proposed for debarment, voluntarily excluded, or involuntarily excluded from receiving a contract from any federal, state or local government or agency, nor has it been declared ineligible for the award of contracts by any federal, state, or local government or agency, nor does it appear on any federal, state or local government’s Excluded Parties List System. **LICENSOR** must provide immediate written notice to **LICENSEE** if, at any time **LICENSOR** learns that this representation was erroneous when submitted or has become erroneous by reason of changed circumstances. The representations and warranties above are a material representation of fact upon which reliance was placed when entering into the Agreement. If it is later determined that **LICENSOR** knowingly made a false representation, in addition to other remedies available to **LICENSEE**, **LICENSEE** may terminate the Agreement.

F. Conflict of Interest. By executing the Agreement, **LICENSOR** and each person signing on behalf of **LICENSOR** certifies, and in the case of a sole proprietorship, partnership or corporation, each party thereto certifies as to its own organization, that to the best of their knowledge and belief, no member of **A&M SYSTEM** or **A&M**

**SYSTEM's** Board of Regents, nor any employee, or person, whose salary is payable in whole or in part by **A&M SYSTEM**, has direct or indirect financial interest in the Agreement, or in the services, if any, to which the Agreement relates, or in any of the profits, real or potential, related thereto.

8. Miscellaneous Provisions:

A. Notices. Notices required under the Agreement must be given by certified mail, return receipt requested, postage prepaid, or personal delivery, addressed to the party listed below. Each party can change the notice address by sending to the other party a notice of the new address. Notices should be addressed as follows:

**LICENSOR:**

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

**LICENSEE:**

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

with a copy to:

The Texas A&M University System  
Office of General Counsel  
Attn: System Real Estate Office  
301 Tarrow St., 6<sup>th</sup> Floor  
College Station, Texas 77840-7896  
Phone: (979) 458-6350  
Fax: (979) 458-6359  
Email: sreo@tamus.edu

B. Savings Clause. If any term, provision, covenant, or condition of the Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions will remain in full force and effect and will not be affected, impaired or invalidated.

C. Rules and Regulations. **LICENSEE** agrees to abide by any and all reasonable rules and regulations promulgated by **LICENSOR** for the proper operation of the premises provided all such rules and regulations are consistent with this Addendum and are uniformly applied to all tenants/licensees/occupants of the premises. All rules and

regulations promulgated subsequent to commencement of the Agreement must be submitted to **LICENSEE** for consideration and comment at least 30 calendar days prior to implementation.

D. Waiver. The failure of **LICENSOR** or **LICENSEE** to insist in any one or more instances on a strict performance of any of the covenants of the Agreement will not be construed as a waiver or relinquishment of such covenants in future instances, but the same will continue and remain in full force and effect.

E. Successors and Assigns. The Agreement and each and all of its covenants, obligations and conditions will inure to the benefit of and be binding upon the heirs, personal representatives, successors and assigns of **LICENSOR**, and the successor and assigns of **LICENSEE**.

F. Status as State Agency: **LICENSOR** expressly acknowledges that **LICENSEE** is an agency of the State of Texas. Neither the execution of the Agreement nor any other conduct, action, or inaction of any representative of **LICENSEE** relating to the Agreement constitutes or is intended to constitute a waiver of **LICENSEE**'s or the state's sovereign immunity.

G. Right to Audit. **LICENSOR**, must at all times during the Term of the Agreement, at **LICENSOR**'s sole cost, retain accurate and complete financial records, supporting documents, and any other records or books relating to the Agreement. **LICENSOR** must retain these records for a period of seven years after the expiration of the Agreement, or until **A&M SYSTEM** or the Texas State Auditor's Office, or any successor agency (collectively, "Auditor"), is satisfied that all audit, claim, and litigation matters are resolved, whichever period is longer. **LICENSOR** must grant access to all books, records, and documents pertinent to the Agreement for purposes of inspecting, monitoring, auditing, or evaluating by **A&M SYSTEM** and the Auditor. Furthermore, **LICENSOR** must ensure that this section's provisions concerning the authority to audit funds received either directly or indirectly by subcontractors through **LICENSOR** and the requirement to cooperate is included in any subcontract(s) that the **LICENSOR** enters with any subcontractor(s) related to the Agreement.

H. Availability of Funding. The Agreement may be contingent upon the continuation of state or federally funded programs, the appropriation of funds by the Texas Legislature and/or the availability of specific funds to cover the full term and cost of the Agreement. In the event a curtailment of state or federally funded programs occurs, state appropriations are curtailed or withdrawn, or in the event specific funds are unavailable to **LICENSEE**, **LICENSEE** may terminate the Agreement upon written notice to **LICENSOR**, or may assign the Agreement, or sublet the Premises, or any part of the Premises, to another agency of the State of Texas, without further duty or obligation hereunder. **LICENSOR** acknowledges that appropriation of funds is beyond the control of **LICENSEE**.

I. Force Majeure. Neither party will be in breach of its obligations under the Agreement or incur any liability to the other party for any losses or damages of any nature whatsoever incurred or suffered by that other party if and to the extent that it is prevented from carrying out those obligations by, or such losses or damages are caused by, a Force Majeure event (as defined below), except to the extent that the relevant breach of its obligations would have occurred, or the relevant losses or damages would have arisen, even if the Force Majeure event had not occurred. "Force Majeure event" is defined as: 1) acts of God; 2) war; 3) act(s) of terrorism; 4) fires; 5) explosions; 6) natural disasters, to include without limitation, hurricanes, floods, and tornadoes; 7) failure of transportation; 8) strike(s); 9) loss or shortage of transportation facilities; 10) lockout, or commandeering of materials, products, plants or facilities by the government or other order (both federal and state); 11) interruptions by government or court orders (both federal and state); 12) present and future orders of any regulatory body having proper jurisdiction; 13) civil disturbances, to include without limitation, riots, rebellions, and insurrections; 14) epidemic(s), pandemic(s), or other national, state, or regional emergency(ies); and 15) any other cause not enumerated in this provision, but which is beyond the reasonable control of the party whose performance is affected and which by the exercise of all reasonable due diligence, such party is unable to overcome. Such excuse from performance will be effective only to the extent and duration of the Force Majeure event(s) causing the failure or delay in performance and provided that the affected party has not caused such Force Majeure event(s) to occur and continues to use diligent, good faith efforts to avoid the effects of such Force Majeure event(s) and to perform its obligation(s). Written notice of a party's failure or delay in performance due to Force Majeure must be given within a reasonable time after its occurrence and must describe the Force Majeure event(s) and the actions taken to minimize the impact of such Force Majeure event(s). For the avoidance of doubt, the COVID-19 pandemic and any governmental changes or closures related thereto shall be deemed Force Majeure events, even to the extent reasonably foreseeable by either party as of the effective date of the Agreement.

J. Limitations. **LICENSOR** is aware that there are constitutional and statutory limitations on the authority of **LICENSEE**, a state agency, to enter into certain terms and conditions of the Agreement, including, but not limited to, those terms and conditions relating to liens on **LICENSEE**'s property; disclaimers and limitations of warranties; disclaimers and limitations of liability for damages; waivers, disclaimers and limitations of legal rights, remedies, requirements and processes; limitations of periods to bring legal action; granting control of litigation or settlement to another party; liability for acts or omissions of third parties; payment of attorney's fees; dispute resolution; indemnities; and confidentiality (collectively, the "Limitations"), and terms and conditions related to the Limitations will not be binding on **LICENSEE** except to the extent authorized by the Constitution and the laws of the State of Texas. Neither the execution of the Agreement by **LICENSEE** nor any other conduct, action, or inaction of any representative of **LICENSEE** relating to the Agreement constitutes or is intended to constitute a waiver of **LICENSEE**'s or the state's sovereign immunity to suit.

**EXECUTED** this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ by **LICENSOR**, or its authorized representative.

\_\_\_\_\_

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

Name: \_\_\_\_\_

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

**[SIGNATURES CONTINUE ON NEXT PAGE]**

**EXECUTED** this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_ by **LICENSEE**, or its authorized representative.

\_\_\_\_\_, a member of The Texas A&M University System, an agency of the State of Texas

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

Name: \_\_\_\_\_

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