

FACILITIES USE AGREEMENT
(Member as Licensee)
(Not to Exceed 2 years or \$50,000/year)

This Facilities Use Agreement (“Agreement”) is entered into this ____ day of _____, 20____ between _____, a _____ (“Licensor”) and _____, a member of The Texas A&M University System (“A&M SYSTEM”) and an agency of the State of Texas (“Licensee”).

In consideration of the covenants and agreements contained herein, Licensor and Licensee agree as follows:

1. Grant of License: Licensor grants to Licensee a license to use the space described below, subject to the terms and conditions of this Agreement, for the purpose of _____ (the “Event”).

2. Licensed Space: This license covers only the following space (collectively, the “Licensed Space”): _____

3. Term: The period during which Licensee is entitled to use the Licensed Space is herein called the “Term.” All set-up and take-down activities in the Licensed Space will occur during the Term. The Term of this Agreement is as follows:

<u>Date(s)</u>	<u>Commencement Time</u>	<u>Termination Time</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____

4. Fee: Licensee agrees to pay Licensor a \$ _____ fee as consideration for Licensee’s use of the Licensed Space for the purpose described above (the “Fee”). The Fee will be paid no less than five business days prior to the Event.

5. Deposit: At the time of execution of this Agreement, Licensee will pay Licensor, as a deposit, the sum of \$ _____ which will be credited to expenses such as the Fee or any other amounts due to Licensor hereunder.

6. Payments: Licensee will make all deposits and payments under this Agreement to Licensor at the following address:

7. Utilities: Licensor must furnish customary heating, lighting, water, electricity, and air conditioning for the Licensed Space.

8. Alcoholic Beverages: Licensee will not sell or give away or allow beer, wine, or any beverage of alcoholic content to be sold, given away, sampled, or consumed in the Licensed Space without prior written consent of Licensor.

9. Care of Property: Licensee will take good care of the Licensed Space and all property located therein and will leave the Licensed Space clean and orderly after use. Licensee will be liable for the cost of any repairs, restorations or replacements to the Licensed Space or Licensor's property necessitated by Licensee's or Licensee's officers, employees, agents, contractors, or invitees' use, and Licensee will reimburse Licensor for all such costs within 10 business days after delivery of an invoice therefor.

10. Notices: Any notices required or permitted under this Agreement must be in writing and will be deemed given: (a) three (3) business days after it is deposited and post-marked with the United States Postal Service, postage prepaid, certified mail, return receipt requested, (b) the next business day after it is sent by overnight carrier, (c) on the date sent by email transmission with electronic confirmation of receipt by the party being notified, or (d) on the date of delivery if delivered personally. The parties may change their respective notice address by sending to the other party a notice of the new address. Notices should be addressed as follows:

To Licensor:

Attn: _____

To Licensee:

Attn: _____

with a copy to:

The Texas A&M University System
Office of General Counsel
Attn: Property & Construction
301 Tarrow St., 6th Floor
College Station, Texas 77840-7896
Phone: 979-458-6120
Email: property@tamus.edu

11. Control of Premises and Right to Enter: In permitting the use of the Licensed Space, Licensor specifically retains the right to enforce any and all laws, rules and regulations applicable to the Licensed Space, and representatives of Licensor may enter any portion of the Licensed Space at any time and on any occasion without any restrictions.

12. Property Restrictions: Licensee will not use or permit the Licensed Space to be used for any purpose other than that set forth herein. Licensee further covenants and agrees:

- a. All activities in the Licensed Space will be conducted so as not to endanger any person or damage any property therein.
- b. All aisles, corridors, passages, vestibules, elevators, and stairways will be kept free and clear of obstructions and will not be used other than for ingress and egress.
- c. No alterations will be made to the Licensed Space.

- d. No confetti, glitter, glue, or flammable tissue paper, crepe paper, or material for decorative purposes or any combustible liquid or substance or laser lighting equipment will be used or permitted unless first been approved by Licensor in writing.
- e. No candles are permitted in the Licensed Space.
- f. No carts, dollies or other equipment with metal casters are permitted in the Licensed Space.
- g. No smoking is allowed in or around the Licensed Space.
- h. No animals (except service animals) are allowed in or around the Licensed Space.
- i. Food and drink are permissible in the Licensed Space.

13. Waivers and Modifications: No waiver of any provision hereof will be effective unless stated in writing and signed by Licensor and Licensee. No such waiver will constitute a waiver of the same provision on a subsequent occasion nor of any other provision of this Agreement. The delay or failure of either party to assert or exercise any right, remedy, or privilege hereunder will not constitute a waiver of such right, remedy, or privilege.

14. Miscellaneous Provisions:

- a. This Agreement constitutes the entire agreement between the parties with respect to the subject matter and no prior agreement, written or oral, will be effective to vary the terms of this Agreement.
- b. No amendment to this Agreement will be effective unless reduced to writing and signed by an authorized representative of each party.
- c. This Agreement will be governed by, and construed in accordance with, the laws of the State of Texas.
- d. By statute, mandatory venue for all legal proceedings against Licensee is to be in the county in which the primary office of the chief executive officer is located.
- e. Neither party may assign this Agreement, in whole or in part, without the prior written consent of the other party.
- f. The invalidity or illegality of any part of this Agreement will not affect the validity or force of any other part hereof.
- g. The paragraph titles herein are for convenience only and do not define, limit, or construe the contents of such paragraphs.

15. Force and Effect: This Agreement will have no force or effect unless fully executed by both parties.

16. 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.

17. Status as State Agency: Licensor expressly acknowledges that Licensee is an agency of the State of Texas and nothing in this Agreement will be construed as a waiver or relinquishment by Licensee of its right to claim such exemptions, privileges, and immunities as may be provided by law.

18. Availability of Funding. This Agreement is made and entered into in accordance with the provisions of Chapter 2167 of the Texas Government Code and may be contingent upon the continuation of state or federally funded programs and/or the availability of specific funds within Licensee to cover the full term and cost of this Agreement. In the event a curtailment of state or federally funded programs occurs, or in the event specific funds are unavailable, Licensee will issue written notice to Licensor and Licensee may terminate this Agreement without further duty or obligation hereunder. Licensor acknowledges that appropriation of funds is beyond the control of Licensee.

19. Debts or Delinquencies. Pursuant to Section 2252.903, Texas Government Code, Licensor agrees that any payments owing to Licensor under this 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.

20. Child Support. A child support obligor who is more than 30 days delinquent in paying child support and a business entity in which the 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 an agreement 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. The Texas Family Code requires the following statement: “Under Section 231.006, Texas Family Code, the vendor or applicant certifies that the individual or business entity named in this contract, bid, or application is not ineligible to receive the specified grant, loan, or payment and acknowledges that this contract may be terminated and payment may be withheld if this certification is inaccurate.”

21. Force Majeure: Neither party will be in breach of its obligations under this 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 this Agreement.

22. Franchise Tax Certification. If Licensor is a taxable entity subject to the Texas Franchise Tax (Chapter 171, Texas Tax Code), then Licensor certifies that it is not currently delinquent in the payment of any franchise taxes or that Licensor is exempt from the payment of franchise taxes.

23. 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 this Agreement. If it is

later determined that Licensor knowingly made a false representation, in addition to other remedies available to Licensee, Licensee may terminate this Agreement.

24. Right to Audit. Licensor, must at all times during the Term of this License, at Licensor's sole cost, retain accurate and complete financial records, supporting documents, and any other records or books relating to this Agreement. Licensor must retain these records for a period of seven years after the expiration of this License, or until Licensee 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 this Agreement for purposes of inspecting, monitoring, auditing, or evaluating by Licensee 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 this Agreement.

25. Conflict of Interest. By executing this 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 this Agreement, or in the services, if any, to which this Agreement relates, or in any of the profits, real or potential, related thereto.

26. AGREEMENT NULL AND VOID: THE PARTIES ACKNOWLEDGE THAT THIS AGREEMENT IS NULL AND VOID IF THE TERM EXCEEDS TWO YEARS OR THE FEE EXCEEDS \$50,000 PER YEAR.

[SIGNATURES TO FOLLOW ON NEXT PAGE]

ACCEPTED AND AGREED this ____ day of _____, 20____:

LICENSOR:

By: _____

Name: _____

Title: _____

LICENSEE:

By: _____

Name: _____

Title: _____

APPROVAL RECOMMENDED:

By: _____

Name: _____

Title: _____