

## 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 **LICENSOR's** benefit or for **LICENSEE's** benefit, since **LICENSEE** is self-insured.

B. Renewing or extending the Agreement beyond the agreement term or automatically continuing the Agreement period from term to 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 and the obligations of the parties under 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 by **LICENSEE** for lost profit, consequential, punitive or liquidated damages, or for damages in excess of the actual losses incurred by the **LICENSOR** if the Agreement is terminated before the end of the Agreement term.

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 provision or 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. Obligating **LICENSEE** to indemnify, defend or hold harmless any party.

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

N. Requiring **LICENSEE** to pay any fee for late payment or early termination of the Agreement.

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, and any document incorporated herein by reference constitutes the complete agreement of **LICENSOR** and **LICENSEE** and supersedes any prior understanding or agreement, written or oral, between them regarding the issues covered by the Agreement. The Agreement may not be modified orally or in any manner other than by agreement in writing signed by the parties hereto or their permitted successors or assigns.

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 incorporation or organization, 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. Use of Name. Each party acknowledges that all rights in any trademarks, service marks, slogans, logos, designs, and other similar means of distinction associated with that party (its “Marks”), including all goodwill pertaining to the Marks, are the sole property of that party. Neither party may use the Marks of the other without the advance written consent of that party, except that each party may use the name of the other party in factual statements that, in context, are not misleading.

7. Compliance With State and Federal Law

A. Accessibility. In signing the Agreement, **LICENSOR** certifies that at the time the Licensed Space becomes occupied by **LICENSEE** and throughout the term of the Agreement and any additional term, **LICENSOR** will comply with The Texas Accessibility Standards regarding architectural barriers to persons with disabilities promulgated under Chapter 469, Texas Government Code as prepared and administered by the Texas Department of Licensing and Regulation (“TDLR”); the ADA Accessibility Guidelines promulgated under The Americans with Disabilities Act of 1990, Public Law 101-336, 42 U.S.C. § 12181 *et seq.*

Neither **LICENSEE** nor its occupying department have authority to waive any requirements of Chapter 469 of the Texas Government Code and any claim regarding such a waiver is expressly denied. Neither **LICENSEE**, the occupying department, nor the TDLR have authority to waive any requirements of the federal Americans with Disabilities Act, and any claim regarding such waiver is expressly denied.

B. Child Support. **LICENSOR** expressly acknowledges that a child support obligor who is more than thirty (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 twenty-five percent (25%) 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 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.

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. **LICENSOR** certifies, to the best of its knowledge and belief, that no member of the Board of Regents of The Texas A&M University System, nor any employee of The Texas A&M University System, has a direct or indirect financial interest in **LICENSOR** or in the transaction that is the subject of the Agreement.

8. Miscellaneous Provisions:

A. Notices. Any notices required or permitted under the Agreement and/or this Addendum 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:

**LICENSOR:**

Attn: \_\_\_\_\_

\_\_\_\_\_

Phone: \_\_\_\_\_

Email: \_\_\_\_\_

**LICENSEE:**

\_\_\_\_\_

Attn: \_\_\_\_\_

\_\_\_\_\_

Phone: \_\_\_\_\_

Email: \_\_\_\_\_

with a copy to:

The Texas A&M University System

Office of General Counsel

Attn: Property & Construction

301 Tarrow St., 6<sup>th</sup> Floor

College Station, Texas 77840-7896

Phone: 979-458-6120

Email: property@tamus.edu

9. Non-Assignment. **LICENSOR** will neither assign its rights nor delegate its duties under the Agreement without the prior written consent of **LICENSEE**.

10. Governing Law. The validity of the Agreement and all matters pertaining to the Agreement, including but not limited to, matters of performance, non-performance, breach, remedies, procedures, rights, duties, and interpretations or construction, will be governed and determined by the Constitution and the laws of the State of Texas.

11. Venue. Pursuant to Section 85.18, Texas Education Code, venue for any suit filed against **LICENSEE** will be in the county in which the primary office of the chief executive officer of **LICENSEE** is located.

12. Compliance with Laws. Each party hereto will comply with all federal, state, and local laws, rules, and regulations applicable to the performance of its obligations under the Agreement.

13. Tax Exempt Status. As an agency of the State of Texas, **LICENSEE** is tax exempt in the State of Texas. Tax exemption certification will be furnished upon request.

14. Dispute Resolution. To the extent that Chapter 2260, Texas Government Code, is applicable to the Agreement, the dispute resolution process provided in Chapter 2260, and the related rules adopted by the Texas Attorney General pursuant to Chapter 2260, will be used by **LICENSEE** and **LICENSOR** to attempt to resolve any claim for breach of contract made by **LICENSOR** that cannot be resolved in the ordinary course of business. **LICENSOR** will submit written notice of a claim of breach of contract under this Chapter to the Contracts Officer of **LICENSEE**, who will examine **LICENSOR**'s claim and any counterclaim and negotiate with **LICENSOR** in an effort to resolve the claim. This provision and nothing in the Agreement waives **LICENSEE**'s sovereign immunity to suit or liability, and **LICENSEE** has not waived its right to seek redress in the courts.

15. Severability. In case any one or more of the provisions contained in the Agreement is, for any reason, held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability will not affect any other provisions hereof, and the Agreement will be construed as if such invalid, illegal, and unenforceable provision had never been contained herein. The parties agree that any alterations, additions, or deletions to the provisions of the Agreement that are required by changes in federal or state law or regulations are automatically incorporated into the Agreement without written amendment hereto and will become effective on the date designated by such law or by regulation.

16. Rules and Regulations. **LICENSEE** agrees to abide by any and all reasonable rules and regulations promulgated by **LICENSOR** for the proper operation of the Licensed Space provided all such rules and regulations are provided to **LICENSEE** in writing, are consistent, and are uniformly applied to all tenants/licensees/occupants of the Licensed Space. All rules and regulations promulgated subsequent to commencement of the Agreement must be submitted to **LICENSEE** for consideration and comment at least thirty (30) calendar days prior to implementation.

17. 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.

18. 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 successors and assigns of **LICENSEE**.

19. State Auditor's Office. **LICENSOR** understands that acceptance of funds under the Agreement constitutes acceptance of the authority of the Texas State Auditor's Office, or any successor agency (collectively, "Auditor"), to conduct an audit or investigation in connection with those funds pursuant to Section 51.9335(c), Texas Education Code. **LICENSOR** agrees to cooperate with the Auditor in the conduct of the audit or investigation, including without limitation, providing all records requested. **LICENSOR** will include this provision in all contracts with permitted subcontractors.

20. 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 sublicense the Licensed Space, or any part of the Licensed Space, 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**.

21. Force Majeure. Neither party is required to perform any non-monetary term, condition, or covenant of the Agreement, if performance is prevented or delayed by a natural occurrence, fire, flood, pandemic, epidemic, quarantine, national or regional emergency, governmental order or action, civil commotion, riot, war (declared and undeclared), revolution, act of foreign or domestic terrorism, embargo, act of God, or other similar occurrence, the cause of which is not reasonably within the control of such party and which by due diligence it is unable to prevent or overcome.

22. Limitations. As an agency of the State of Texas, there are constitutional and statutory limitations on the authority of the **LICENSEE** 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"). 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.

23. Time. Time is of the essence in respect to the performance of each provision of the Agreement.

24. Certification Regarding Business with Certain Countries and Organizations. **LICENSOR** represents and warrants that it is not engaged in business with Iran, Sudan, or a foreign terrorist organization, as prohibited by Section 2252.152, Texas Government Code. **LICENSOR** acknowledges the Agreement may be terminated immediately if this certification is inaccurate.

25. Prohibition on Contracts with Companies Boycotting Israel. To the extent Chapter 2271, Texas Government Code, is applicable to the Agreement, **LICENSOR** certifies that (a) it does not currently boycott Israel, and (b) it will not boycott Israel during the term of the Agreement. **LICENSOR** acknowledges the Agreement may be terminated and payment withheld if this certification is inaccurate.

26. Verification Regarding Discrimination Against Firearm Entities and Trade Associations. To the extent that Chapter 2274, Texas Government Code, is applicable to the Agreement, **LICENSOR** verifies that (1) it does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association, and (2) it will not discriminate during the term of the Agreement against any firearm entity or firearm trade association. **LICENSOR** acknowledges the Agreement may be terminated and payment withheld if this verification is inaccurate.

27. Verification Regarding Boycotting Energy Companies. To the extent that Chapter 2276, Texas Government Code, is applicable to the Agreement, **LICENSOR** verifies that (1) it does not boycott energy companies, and (2) it will not boycott energy companies during the term of the Agreement. **LICENSOR** acknowledges the Agreement may be terminated and payment withheld if this verification is inaccurate.

**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: \_\_\_\_\_