

## FACILITIES USE AGREEMENT ADDENDUM

(Member as Licensee)

**THIS ADDENDUM** is entered into this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ between \_\_\_\_\_, a \_\_\_\_\_ (“**LICENSOR**”) and \_\_\_\_\_, a member of The Texas A&M University System and an agency of the State of Texas (“**LICENSEE**”), 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, shall 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 shall 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 shall 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, 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 shall 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 this Agreement, and the individual executing this Agreement on behalf of **LICENSOR** has been duly authorized to act for and bind **LICENSOR**.

6. Publicity. **LICENSOR** shall 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 this 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 this Agreement is not ineligible to receive payment from the state and acknowledges that this Agreement may be terminated and payment may be withheld if this certification is inaccurate.

C. 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.

D. 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** shall 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.

8. Miscellaneous Provisions:

A. Notices. Notices required under this 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, 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 this 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 of the premises. All rules and regulations promulgated subsequent to commencement of this 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 this Agreement shall not be construed as a waiver or relinquishment of such covenants in future instances, but the same shall continue and remain in full force and effect.

E. Successors and Assigns. This Agreement and each and all of its covenants, obligations and conditions shall 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. State Audits. **LICENSOR** understands that acceptance of funds under this Agreement acts as acceptance of the authority of the State Auditor's Office, or any successor agency, to conduct an audit or investigation in connection with those funds. **LICENSOR** further agrees to cooperate fully with the State Auditor's Office or its successor in the conduct of the audit or investigation, including providing all records requested. **LICENSOR** will ensure that this clause concerning the authority to audit funds received indirectly by subcontractors through **LICENSOR** and the requirement to cooperate is included in any subcontract it awards.

G. 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 appropriation of funds by the Texas Legislature. 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**.

H. Force Majeure. Neither party is required to perform any term, condition, or covenant of this Agreement, if performance is prevented or delayed by a natural occurrence, a fire, an act of God, an act of terrorism, 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.

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