# TEXAS A&M UNIVERSITY

# facility use ADDENDUM

The following terms and conditions are incorporated into and form a part of the agreement (“Agreement”) to which this Addendum is attached. “Texas A&M” means Texas A&M University, a member of The Texas A&M University System, an agency of the State of Texas and “FACILITY” means [[ Second Party Name ]].

**To the extent applicable, in accordance with Texas Education Code Section 51.9335(h), any provision required by applicable Texas law to be included in or deleted from the Agreement shall be deemed to be automatically incorporated into or deleted from (as the case may be) the Agreement by operation of law.**

**DIRECT BILL ACCOUNT:**

All charges accrued and payable by Texas A&M will be applied to the master account and direct billed. If an existing direct bill account is not already established and on file, Texas A&M will submit information required to establish a direct bill account prior to the Agreement start date.

**PAYMENT OF MASTER ACCOUNT:**

The outstanding balance of Texas A&M’s direct bill account, excluding disputed charges, will be due following the event and payable within thirty (30) days from receipt of invoice. Upon resolution of any disputed charges, FACILITY shall invoice such remaining charges to Texas A&M. Payment of the revised charges shall be payable within thirty (30) days of receipt of invoice. All past due amounts will be subject to a finance charge in accordance with the Texas Prompt Payment Act, Chapter 2251, *Texas Government Code*.

**TAX EXEMPT STATUS:**

As an agency of the State of Texas, Texas A&M is tax exempt. Tax exemption certification will be furnished upon request.

**CANCELLATION**:

In the event Texas A&M must cancel the Agreement, FACILITY will make every effort to resell the space (including, but not limited to, sleeping rooms, meeting rooms, and/or conference rooms) reserved by Texas A&Min order to reduce Texas A&M’s cancellation/attrition fees. Resold space will be credited to reducing any obligations that Texas A&M may have incurred. Texas A&M will not pay any cancellation/attrition fees until after the departure date. A copy of FACILITY’s occupancy report, concerning the space reserved by Texas A&M for the dates cancelled by Texas A&M**,** shall be delivered to Texas A&M within ten (10) business days of departure date.

Texas A&M, at any time prior to the arrival date with written notice, may cancel the Agreement with FACILITY without liability or penalty, in the event one or more of the following occur:

1. A force majeure event as described below, renders either party’s performance inadvisable, impossible, or is materially affected. In the event of cancellation under this Item 1, FACILITY agrees to return any deposits paid by Texas A&M. In the event Texas A&M decides to continue with its reserved use of the FACILITY despite such circumstances, FACILITY will waive any fees related to a reduced-sized program or event including, but not limited to, any food and beverage attrition fees and space rental.
2. There is a change in ownership or management of the FACILITY prior to the scheduled arrival date.
3. FACILITY enters into bankruptcy proceedings, becomes insolvent or subject to foreclosure, or takes any other like action for the benefit of creditors or debtors prior to the scheduled arrival date.

**MANDATORY STATE AGENCY CERTIFICATIONS AND PROVISIONS:**

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

**Prohibited Bids and Agreements.** Under Section 2155.004, *Texas Government Code*, FACILITY certifies that FACILITY is not ineligible to receive the Agreement and acknowledges that the Agreement may be terminated and payment withheld if this certification is inaccurate.

**Payment of Debt or Delinquency to the State.** Pursuant to Sections 2107.008 and 2252.903, *Texas Government Code*, FACILITY agrees that any payments owing to FACILITY under the Agreement may be applied directly toward certain debts or delinquencies that FACILITY 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.

**Delinquent Child Support Obligations.** 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. Under Section 231.006, *Texas Family Code*, FACILITY certifies that it is not ineligible to receive the payments under this Agreement and acknowledges that this Agreement may be terminated and payment may be withheld if this certification is inaccurate.

**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 interpretation or construction, shall be governed and determined by the Constitution and the laws of the State ofTexas.

**Venue.** Pursuant to Section 85.18(b), *Texas Education Code*, mandatory venue for all legal proceedings against Texas A&M is to be in the county in which the principal office of Texas A&M’s governing officer is located.

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

**Limitations.** As an agency of the state of Texas, there are constitutional and statutory limitations on the authority of Texas A&M to enter into certain terms and conditions of this Agreement, including, but not limited to, those terms and conditions relating to liens on Texas A&M’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 attorneys’ fees; dispute resolution; indemnities; and confidentiality (collectively, the “Limitations”). Terms and conditions related to the Limitations will not be binding on Texas A&M except to the extent authorized by the Constitution and the laws of the State of Texas. Neither the execution of this Agreement by Texas A&M nor any other conduct, action, or inaction of any representative of Texas A&M relating to this Agreement constitutes or is intended to constitute a waiver of Texas A&M’s or the state’s sovereign immunity.

**Loss of Funding.** Performance by Texas A&M under this Agreement may be dependent upon the appropriation and allotment of funds by the Texas State Legislature (the “Legislature”). If the Legislature fails to appropriate or allot the necessary funds, Texas A&M will issue written notice to FACILITY and Texas A&M may terminate this Agreement without further duty or obligation hereunder. FACILITY acknowledges that appropriation of funds is beyond the control of Texas A&M. In the event of a termination or cancellation under this Section, Texas A&M will not be liable to FACILITY for any damages that are caused or associated with such termination or cancellation.

**Force Majeure.** Neither Party shall be held liable or responsible to the other Party nor be deemed to have defaulted under or breached this Agreement for failure or delay in fulfilling or performing any obligation under this Agreement if and to the extent such failure or delay is caused by or results from causes beyond the affected Party’s reasonable control, including, but not limited to, acts of God, strikes, riots, flood, fire, epidemics, natural disaster, embargoes, war, insurrection, terrorist acts or any other circumstances of like character; provided, however, that the affected Party has not caused such force majeure event(s), shall use reasonable commercial efforts to avoid or remove such causes of nonperformance, and shall continue performance hereunder with reasonable dispatch whenever such causes are removed. Either Party shall provide the other Party with prompt written notice of any delay or failure to perform that occurs by reason of force majeure, including describing the force majeure event(s) and the actions taken to minimize the impact of such event(s).

**Conflict of Interest.** FACILITY certifies, to the best of their knowledge and belief, that no member of the A&M System Board of Regents, or any officer of Texas A&M or the A&M System, has a direct or indirect financial interest in FACILITY or in the transaction that is the subject of this Agreement.

**Certification Regarding Boycotting Israel.** To the extent that Chapter 2271, *Texas Government Code*, is applicable to this Agreement, FACILITY certifies that (a) it does not currently boycott Israel, and (b) it will not boycott Israel during the Term of this Agreement. FACILITY acknowledges this Agreement may be terminated and payment withheld if this certification is inaccurate.

**Certification Regarding Business with Certain Countries and Organizations.** To the extent that Subchapter F, Chapter 2252, *Texas Government Code*, is applicable to this Agreement, FACILITY certifies that it is not engaged in business with Iran, Sudan, or a foreign terrorist organization. FACILITY acknowledges this Agreement may be terminated and payment withheld if this certification is inaccurate.

**Certification as to Discrimination Against Firearm Entities.** To the extent that Chapter 2274, *Texas Government Code*,is applicable to this Agreement, FACILITY verifies that (a) it does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association, and (b) it will not discriminate during the term of this Agreement against a firearm entity or firearm trade association. FACILITY acknowledges this Agreement may be terminated and payment withheld of this verification is inaccurate.

**Certification as to Boycotting Energy Companies.** To the extent that Chapter 2274, *Texas Government Code*,is applicable to this Agreement, FACILITY verifies that (a) it does not boycott energy companies, and (b) it will not boycott energy companies during the term of this Agreement. FACILITY acknowledges this Agreement may be terminated and payment withheld of this verification is inaccurate.

**Involvement in Human Trafficking.** Texas A&M cannot award a contract if such contract includes financial participation by a person, who, during the five-year period preceding the date of the contract, has been convicted of any offense related to the direct support or promotion of human trafficking. Under Section 2155.0061, *Texas Government Code*, FACILITY certifies that the individual or business entity named in this Agreement is not ineligible to receive the specified contract and acknowledges that this Agreement may be terminated and payment withheld if this certification is inaccurate.

**Notices.** Any notice required or permitted under this Agreement must be in writing, and shall 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. Texas A&M and FACILITY can change their respective notice address by sending to the other Party a notice of the new address. Notices should be addressed as follows:

**Texas A&M:**

TEXAS A&M UNIVERSITY

[[ Work Group ]]

[[ Primary Contact's Address: ]]

[[ Primary Contact's City/State/Zip: ]]

Attention: [[ Primary Contact's Name: ]]

Telephone: [[ Primary Contact's Phone Number (xxx-yyy-zzzz) ]]

Email: [[ Primary Contact's Email Address ]]

**With a copy to:**

Texas A&M University

Department of Contract Administration

1182 TAMU

College Station, TX 77843-1182

Attention: Director, Contract Administration

Telephone: 979-845-0099

Email: [contracts@tamu.edu](mailto:contracts@tamu.edu)

**FACILITY:**

[[ Second Party Name ]]

[[ Second Party Contact's Address ]]

[[ Second Party Contact's City/State/ZIP ]]

Attention: [[ Second Party Contact's Name ]]

Telephone: [[ Second Party Contact's Phone Number (xxx-yyy-zzzz) ]]

Email: [[ Second Party Contact's Email Address ]]

**INAPPLICABLE PROVISIONS:**

None of the following provisions, if they appear in the Agreement, shall have any effect or be enforceable against Texas A&M:

1. Releasing, waiving, or limiting **FACILITY** or any entity or person from its legal liability for unlawful or negligent conduct or failure to comply with any duty recognized or imposed by applicable law.
2. Requiring that the Agreement be “accepted” or endorsed by the home office or by any other officer of **FACILITY** subsequent to execution by an official of Texas A&M before the Agreement is considered in effect.
3. Permitting unilateral modification of the Agreement by **FACILITY**.
4. Requiring Texas A&M to maintain any type of insurance either for Texas A&M’s benefit or for **FACILITY**’s benefit.
5. Renewing or extending the initial Agreement term or automatically continuing or renewing the original Agreement term.
6. Requiring Texas A&M to submit to binding arbitration.

**ADDENDUM CONTROLLING:**

In the event there is a conflict between the terms and conditions of the Agreement and this Addendum, this Addendum will control.

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| **TEXAS A&M UNIVERSITY** |  | **[[ Second Party Name ]]** |
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