# TEXAS A&m UNIVERSITY AT GALVESTON

# 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. “TAMUG” means Texas A&M University at Galveston, a member of The Texas A&M University System (“A&M System”), an agency of the State of Texas and “FACILITY” means Click or tap here to enter text..

**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 TAMUG will be applied to the master account and direct billed. If an existing direct bill account is not already established and on file, TAMUG will submit information required to establish a direct bill account prior to the Agreement start date.

**PAYMENT OF MASTER ACCOUNT:**

The outstanding balance of TAMUG’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 TAMUG. 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, TAMUG is tax exempt. Tax exemption certification will be furnished upon request.

**CANCELLATION**:

In the event TAMUG 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 TAMUGin order to reduce TAMUG’s cancellation/attrition fees. Resold space will be credited to reducing any obligations that TAMUG may have incurred. TAMUG will not pay any cancellation/attrition fees until after the departure date. A copy of FACILITY’s occupancy report, concerning the space reserved by TAMUG for the dates cancelled by TAMUG**,** shall be delivered to TAMUG within ten (10) business days of departure date.

TAMUG, 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 TAMUG. In the event TAMUG 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.** Under Section 231.006, *Texas Family Code*, FACILITY certifies that FACILITY is not ineligible to receive the Agreement and acknowledges that the 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 TAMUG is to be in the county in which the principal office of TAMUG’s governing officer is located.

**Dispute Resolution.** The dispute resolution process provided in Chapter 2260, *Texas Government Code*, and the related rules adopted by the Texas Attorney General pursuant to Chapter 2260, shall be used by TAMUG 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 University Contracts Officer of TAMUG,who shall examine FACILITY’s claim and any counterclaim and negotiate with FACILITY in an effort to resolve the claim.

**Limitations.** FACILITY acknowledges that TAMUG is subject to constitutional and statutory limitations on its ability to enter into certain terms and conditions of the Agreement, which may include, but is not limited to, those terms and conditions relating to liens on TAMUG’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 relating to these Limitations will only be binding on TAMUG to the extent permitted by the Constitution and the laws of the State of Texas. Neither the execution of the Agreement by TAMUG nor any other conduct, action, or inaction of any representative of TAMUG relating to the Agreement constitutes or is intended to constitute a waiver of TAMUG’s or the state’s sovereign immunity to suit.

**Loss of Funding.** Performance by TAMUG under the 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, TAMUG will issue written notice to FACILITY and TAMUG may terminate the Agreement without further duty or obligation hereunder. FACILITY acknowledges that appropriation of funds is beyond the control of TAMUG.

**Force Majeure.** Neither Party will be in breach of its obligations under this Agreement (other than payment obligations) 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, 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 had not occurred.  Force Majeure 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 the 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 which notice must describe the Force Majeure event(s) and the actions taken to minimize the impact of such Force Majeure event(s). Notwithstanding the foregoing, a Party’s financial inability to perform its obligations shall in no event constitute a Force Majeure. 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.

**Conflict of Interest.** By executing and/or accepting this Agreement, FACILITY and each person signing on behalf of FACILITY certifies, and in the case of a sole proprietorship, partnership or corporation, each Party thereto certifies as to its own organization, under penalty of perjury, that to the best of their knowledge and belief, no member of the A&M System or the A&M System Board of Regents, nor any employee, or person, whose salary is payable in whole or in part by TAMUG or the A&M System, has direct or indirect financial interest in the award of this Agreement, or in the services to which this Agreement relates, or in any of the profits, real or potential, thereof.

**Certification Regarding Boycotting Israel.** To the extent that *Texas Government Code*, Chapter 2271 applies 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.** Pursuant to Subchapter F, Chapter 2252, *Texas Government Code*, FACILITY certifies FACILITY 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.** Pursuant to *Texas Government Code* Chapter 2274 and if applicable, FACILITY certifies that FACILITY (a) does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association, and (b) will not discriminate during the Term of this Agreement against a firearm entity or firearm trade association.

**Certification as to Boycotting Energy Companies.** Pursuant to *Texas Government Code* Chapter 2274 and if applicable, FACILITY certifies that FACILITY does not currently boycott energy companies and will not boycott energy companies during the Term of this Agreement. For purposes of this provision, “boycott energy companies” has the meaning provided in *Texas Government Code* Section 809.001.

**Prohibition on Contracts Related to Persons Involved in Human Trafficking.** Under Section 2155.0061, *Texas Government Code*, FACILITY certifies that FACILITY is not ineligible to receive this Agreement 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 to be delivered (whether actually received or not) when deposited with the United States Postal Service, postage prepaid, certified mail, return receipt requested, and addressed to the intended recipient at the address set out below. Notice may also be given by regular mail, personal delivery, courier delivery, email, or other commercially reasonably means and will be effective when actually received. TAMUG 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:

**TAMUG:**

Texas A&M University at Galveston

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Attention: Click or tap here to enter text.

Telephone: Click or tap here to enter text.

Email: Click or tap here to enter text.

**With a copy to:**

Texas A&M University

Department of Contract Administration

1182 TAMU

College Station, TX 77843-1182

Attention: Executive Director

Telephone: 979-845-0099

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

**FACILITY:**

Click or tap here to enter text.

Click or tap here to enter text.

Click or tap here to enter text.

Attention: Click or tap here to enter text.

Telephone: Click or tap here to enter text.

Email: Click or tap here to enter text.

**INAPPLICABLE PROVISIONS:**

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

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 TAMUG before the Agreement is considered in effect.
3. Permitting unilateral modification of the Agreement by FACILITY.
4. Requiring TAMUG to maintain any type of insurance either for TAMUG’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 TAMUG 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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