

UNIVERSITY ADDENDUM TO TOPGOLF EVENT AGREEMENT

This University Addendum (this "Addendum") to the Topgolf Event Agreement is entered into by and between **Topgolf USA Bryan, LLC** ("Topgolf") and **Texas A&M University, a member of the Texas A&M University System, an agency of the State of Texas** ("Client" or "University") and shall supplement the attached Event Agreement for the event expected to occur at Topgolf's facility (the "Event") and shall incorporate the terms and conditions below.

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 Event Agreement shall be deemed to be automatically incorporated into or deleted from (as the case may be) the Event Agreement by operation of law.

RECITALS

WHEREAS, Client desires to plan an Event at the Topgolf facility listed on the attached Event Agreement; and

WHEREAS, Client is a University and therefore requires changes to the standard Topgolf Event Agreement terms and conditions; and

WHEREAS, the parties have agreed to amend and supplement the Event Agreement according to the terms and provisions set forth herein.

NOW, THEREFORE, for good and valuable consideration, the parties hereby agree to the following:

1. The Section entitled "Insurance" is hereby deleted in its entirety and replaced as follows:

"Upon execution of this Event Agreement and before commencement of any services, Topgolf reserves the right to require the Client to provide a certificate of insurance or other similar documentation evidencing proof of the following coverages and amounts.

Client, as an agency of the State of Texas, is insured for general liability insurance under a self-insurance program covering its limits of liability. The parties agree that such self-insurance by Client shall without further requirement, satisfy all insurance obligations of Client under the Event Agreement.

Topgolf will, at their own cost and expense, obtain and maintain in full force and effect the following liability insurance:

(i) General Liability Insurance with a minimum of One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) in the aggregate;

(ii) Workers' Compensation Insurance not less than the statutory limits required in the state where the venue is located, including Employer's Liability of not less than One Million Dollars (\$1,000,000) per occurrence;

(iii) Automobile Liability Insurance in an amount not less than One Million Dollars (\$1,000,000) per occurrence.

(iv) Umbrella Liability Insurance in an amount not less than Five Million Dollars (\$5,000,000)."

2. The Section entitled "Indemnification" is hereby deleted in its entirety and replaced as follows:

"To the extent allowed by Texas law, Topgolf and Client each agree to be financially responsible for claims, suits, fees, losses, liabilities, damages, judgments, costs and expenses (collectively referred to as "Claims"), arising out of the actions of the responsible party pursuant to the Event Agreement, including but not limited to any personal injury (including

death) or damage to property resulting from the responsible party or its employees', invitees' or guests' acts or omissions."

3. The Section entitled "Applicable Law" is hereby deleted in its entirety and replaced as follows:

"The validity of the Event Agreement and all matters pertaining to the Event 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 of Texas."

4. The following provisions shall be incorporated into the Event Agreement:

- a. Tax Exempt Status. As an agency of the State of Texas, Client is tax exempt. Tax exempt certification will be furnished to Topgolf upon request.
- b. Franchise Tax Certification. If Topgolf is a taxable entity subject to the Texas Franchise Tax (Chapter 171, Texas Tax Code), then Topgolf certifies that it is not currently delinquent in the payment of any franchise (margin) taxes or that Topgolf is exempt from the payment of franchise (margin) taxes.
- c. Prohibited Bids and Agreements. Under Section 2155.004, *Texas Government Code*, Topgolf certifies that Topgolf is not ineligible to receive the Event Agreement and acknowledges that the Event Agreement may be terminated and payment withheld if this certification is inaccurate.
- d. Payment of Debt or Delinquency to the State. Pursuant to Sections 2107.008 and 2252.903, *Texas Government Code*, Topgolf agrees that any payments owing to Topgolf under the Event Agreement may be applied directly toward certain debts or delinquencies that Topgolf 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.
- e. Delinquent Child Support Obligations. A child support obligor who is more than thirty (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 twenty-five percent (25%) 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*, Topgolf certifies that it is not ineligible to receive the payments under the Event Agreement and acknowledges that the Event Agreement may be terminated and payment may be withheld if this certification is inaccurate.
- f. Venue. Pursuant to Section 85.18(b), *Texas Education Code*, mandatory venue for all legal proceedings against Client is to be in the state courts of Brazos County, Texas.
- g. Dispute Resolution. To the extent that Chapter 2260, *Texas Government Code* is applicable to the Event 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 Client and Topgolf to attempt to resolve any claim for breach of contract made by Topgolf that cannot be resolved in the ordinary course of business. Topgolf shall submit written notice of a claim of breach of contract under this Chapter to the Dispute Resolution Officer of Client, who shall examine Topgolf's claim and any counterclaim and negotiate with Topgolf in an effort to resolve the claim. This provision and nothing in the Event Agreement waives Client's sovereign immunity to suit or liability, and Client has not waived its right to seek redress in the courts.
- h. Limitations. As an agency of the state of Texas, there are constitutional and statutory limitations on the authority of Client to enter into certain terms and conditions of the Event

Agreement, including, but not limited to, those terms and conditions relating to liens on Client'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 Client except to the extent authorized by the Constitution and the laws of the State of Texas. Neither the execution of the Event Agreement by Client nor any other conduct, action, or inaction of any representative of Client relating to the Event Agreement constitutes or is intended to constitute a waiver of Client's or the state's sovereign immunity.

- i. Availability of Funding. The Event Agreement may be contingent upon the continuation of state or federal 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 Event 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 Client, Client may terminate the Event Agreement upon written notice to Topgolf without further duty or obligation hereunder. Topgolf acknowledges that appropriation of funds is beyond the control of Client. In the event of a termination or cancellation under this Section, Client will not be liable to Topgolf for any damages that are caused or associated with such termination or cancellation.
- j. Conflict of Interest. Topgolf 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 Client or The Texas A&M University System, has a direct or indirect financial interest in Topgolf or in the transaction that is the subject of the Event Agreement.
- k. Certification Regarding Boycotting Isreal. To the extent that Chapter 2271, *Texas Government Code*, is applicable to the Event Agreement, Topgolf certifies that (a) it does not currently boycott Israel, and (b) it will not boycott Israel during the Term of the Event Agreement. Topgolf acknowledges the Event Agreement may be terminated and payment withheld if this certification is inaccurate.
- l. Certification Regarding Business with Certain Countries and Organizations. Topgolf 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*. Topgolf acknowledges the Event Agreement may be terminated immediately if this certification is inaccurate.
- m. Certification as to Discrimination Against Firearm Entities. To the extent that Chapter 2274, *Texas Government Code*, is applicable to the Event Agreement, Topgolf 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 the Event Agreement against a firearm entity or firearm trade association. Topgolf acknowledges the Event Agreement may be terminated and payment withheld if this verification is inaccurate.
- n. Certification as to Boycotting Energy Companies. To the extent that Chapter 2276, *Texas Government Code*, is applicable to the Event Agreement, Topgolf verifies that (a) it does not boycott energy companies, and (b) it will not boycott energy companies during the term of the Event Agreement. Topgolf acknowledges the Event Agreement may be terminated and payment withheld of this verification is inaccurate.
- o. Involvement in Human Trafficking. Client 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*, Topgolf certifies that

the individual or business entity named in the Event Agreement is not ineligible to receive the specified contract and acknowledges that the Event Agreement may be terminated and payment withheld if this certification is inaccurate.

- p. Debarment. Topgolf represents and warrants, to the best of its knowledge and belief, that neither Client 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. Topgolf must provide immediate written notice to Client if, at any time Topgolf 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 Event Agreement. If it is later determined that Topgolf knowingly made a false representation, in addition to other remedies available to Client, Client may terminate the Event Agreement.
- q. Confidentiality. As an agency of the State of Texas, Client is subject to the Texas Public Information Act, Chapter 552 of the Texas Government Code. To the extent the Event Agreement places any limits or restrictions on the disclosure of information that is or may be deemed by Topgolf to be confidential, Client’s compliance with the terms of the Public Information Act will not constitute a default under the Event Agreement.
- r. Entire Agreement. The Event Agreement, as amended by this Addendum, and any document incorporated herein by reference constitutes the complete agreement of Topgolf and Client and supersedes any prior understanding or agreement, written or oral, between them regarding the issues covered by the Event Agreement. The Event 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.
- s. Authority. Topgolf 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 Event Agreement, and the individual executing the Event Agreement on behalf of Topgolf has been duly authorized to act for and bind Topgolf.
- t. Non-Assignment. Topgolf will neither assign its rights nor delegate its duties under the Event Agreement without the prior written consent of Client.
- u. Governing Law. The validity of the Event Agreement and all matters pertaining to the Event 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.
- v. Severability. In case any one or more of the provisions contained in the Event 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 Event 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 Event Agreement that are required by changes in federal or state law or regulations are automatically incorporated into the Event Agreement without written amendment hereto and will become effective on the date designated by such law or by regulation.

- w. Waiver. The failure of Topgolf or Client to insist in any one or more instances on a strict performance of any of the covenants of the Event 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.
- x. Successors and Assigns. The Event Agreement and each and all of its covenants, obligations and conditions will inure to the benefit of and be binding upon the successors and assigns of Topgolf, and the successors and assigns of Client.
- y. State Auditor's Office. Topgolf understands that acceptance of funds under the Event 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. Topgolf agrees to cooperate with the Auditor in the conduct of the audit or investigation, including without limitation, providing all records requested. Topgolf will include this provision in all contracts with permitted subcontractors.
- z. Time. Time is of the essence in respect to the performance of each provision of the Event Agreement.
- aa. Notices. Any notice required or permitted under the Event 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. Client and Topgolf can change their respective notice address by sending to the other Party a notice of the new address. Notices should be addressed as follows:

If to Client: Texas A&M University
 Department of Contract Administration
 1182 TAMU
 College Station, TX 77843
 Attn: Director, Contract Administration
 Phone: 979-845-0099
 Email: contracts@tamu.edu

With 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

If to Topgolf: Topgolf
 8750 N. Central Expressway, Suite 1200
 Dallas, TX 75231
 Attn: Legal Department
 Email: legal@topgolf.com

- bb. Inapplicable Provisions. None of the following provisions, if they appear in the Event Agreement, unless otherwise agreed upon by the parties in this Addendum, shall have any effect or be enforceable against Client:

- i. Releasing, waiving, or limiting Topgolf or 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.
 - ii. Requiring that the Event Agreement be “accepted” or endorsed by the home office or by any other officer of Topgolf subsequent to the execution by an official of Client before the Event Agreement is considered in effect.
 - iii. Permitting unilateral modification of the Event Agreement by Topgolf.
 - iv. Requiring Client to maintain any type of insurance either for Client’s benefit or Topgolf’s benefit since the Client is self-insured.
 - v. Renewing or extending the initial Event Agreement term or automatically continuing or renewing the original Event Agreement term.
 - vi. Requiring Client to submit to binding arbitration.
 - vii. Requiring any total or partial compensation or payment by Client for lost profit, consequential, punitive or liquidated damages, or for damages in excess of the actual losses incurred by Topgolf if the Event Agreement is terminated before the end of the Event.
 - viii. Changing the time period within which claims can be made or actions can be brought under the laws of the State of Texas.
 - ix. Obligating Client to pay costs of collection or attorneys’ fees.
 - x. Waiving, disclaiming, or limiting any rights, remedies, requirements, processes, warranties, exemptions, privileges, or immunities available to Client under Texas law.
 - xi. Obligating Client to indemnify, defend or hold harmless any party.
 - xii. Requiring Client to pay any fee for late payment or early termination of the Event Agreement.
5. All other terms and provisions of the Event Agreement shall remain unchanged, unless otherwise set forth herein. In the event the terms of this Addendum conflict with the terms of the Event Agreement, the terms of this Addendum shall govern. Terms not otherwise defined herein shall have the meanings given to them in the Event Agreement.

AGREED AND ACCEPTED:

CLIENT:

TOPGOLF:

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

