# [[ Name (Primary First Party) ]]

# 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. “[[ Doing Business As (Primary First Party) ]]” means Texas A&M University, a member of The Texas A&M University System, an agency of the State of Texas and “[[ Second Party Reference Name ]]” 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 [[ Doing Business As (Primary First Party) ]] will be applied to the master account and direct billed. If an existing direct bill account is not already established and on file, [[ Doing Business As (Primary First Party) ]] will submit information required to establish a direct bill account prior to the Agreement start date.

**PAYMENT OF MASTER ACCOUNT:**

The outstanding balance of [[ Doing Business As (Primary First Party) ]]’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, [[ Second Party Reference Name ]] shall invoice such remaining charges to [[ Doing Business As (Primary First Party) ]]. 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, [[ Doing Business As (Primary First Party) ]] is tax exempt. Tax exemption certification will be furnished upon request.

**CANCELLATION**:

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

[[ Doing Business As (Primary First Party) ]], at any time prior to the arrival date with written notice, may cancel the Agreement with [[ Second Party Reference Name ]] 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, [[ Second Party Reference Name ]] agrees to return any deposits paid by [[ Doing Business As (Primary First Party) ]]. In the event [[ Doing Business As (Primary First Party) ]] decides to continue with its reserved use of the [[ Second Party Reference Name ]] despite such circumstances, [[ Second Party Reference Name ]] 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 [[ Second Party Reference Name ]] prior to the scheduled arrival date.
3. [[ Second Party Reference Name ]] 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 [[ Second Party Reference Name ]] is a taxable entity subject to the Texas Franchise Tax (Chapter 171, *Texas Tax Code*), then [[ Second Party Reference Name ]] certifies that it is not currently delinquent in the payment of any franchise (margin) taxes or that [[ Second Party Reference Name ]] is exempt from the payment of franchise (margin) taxes.

**Prohibited Bids and Agreements.** Under Section 2155.004, *Texas Government Code*, [[ Second Party Reference Name ]] certifies that [[ Second Party Reference Name ]] 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*, [[ Second Party Reference Name ]] agrees that any payments owing to [[ Second Party Reference Name ]] under the Agreement may be applied directly toward certain debts or delinquencies that [[ Second Party Reference Name ]] 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*, [[ Second Party Reference Name ]] 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 [[ Doing Business As (Primary First Party) ]] is to be in the county in which the principal office of [[ Doing Business As (Primary First Party) ]]’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 [[ Doing Business As (Primary First Party) ]] and [[ Second Party Reference Name ]] to attempt to resolve any claim for breach of contract made by [[ Second Party Reference Name ]] that cannot be resolved in the ordinary course of business. [[ Second Party Reference Name ]] shall submit written notice of a claim of breach of contract under this Chapter to the [[ Dispute Resolution Officer ]] of [[ Doing Business As (Primary First Party) ]],who shall examine [[ Second Party Reference Name ]]’s claim and any counterclaim and negotiate with [[ Second Party Reference Name ]] in an effort to resolve the claim. This provision and nothing in this Agreement waives [[ Doing Business As (Primary First Party) ]]’s sovereign immunity to suit or liability, and [[ Doing Business As (Primary First Party) ]] 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 [[ Doing Business As (Primary First Party) ]] to enter into certain terms and conditions of this Agreement, including, but not limited to, those terms and conditions relating to liens on [[ Doing Business As (Primary First Party) ]]’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 [[ Doing Business As (Primary First Party) ]] except to the extent authorized by the Constitution and the laws of the State of Texas. Neither the execution of this Agreement by [[ Doing Business As (Primary First Party) ]] nor any other conduct, action, or inaction of any representative of [[ Doing Business As (Primary First Party) ]] relating to this Agreement constitutes or is intended to constitute a waiver of [[ Doing Business As (Primary First Party) ]]’s or the state’s sovereign immunity.

**Loss of Funding.** Performance by [[ Doing Business As (Primary First Party) ]] 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, [[ Doing Business As (Primary First Party) ]] will issue written notice to [[ Second Party Reference Name ]] and [[ Doing Business As (Primary First Party) ]] may terminate this Agreement without further duty or obligation hereunder. [[ Second Party Reference Name ]] acknowledges that appropriation of funds is beyond the control of [[ Doing Business As (Primary First Party) ]]. In the event of a termination or cancellation under this Section, [[ Doing Business As (Primary First Party) ]] will not be liable to [[ Second Party Reference Name ]] 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.** [[ Second Party Reference Name ]] certifies, to the best of their knowledge and belief, that no member of the A&M System Board of Regents, nor any employee of [[ Doing Business As (Primary First Party) ]] or the A&M System, has a direct or indirect financial interest in [[ Second Party Reference Name ]] 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, [[ Second Party Reference Name ]] certifies that (a) it does not currently boycott Israel, and (b) it will not boycott Israel during the Term of this Agreement. [[ Second Party Reference Name ]] acknowledges this Agreement may be terminated and payment withheld if this certification is inaccurate.

**Certification Regarding Business with Certain Countries and Organizations.** [[ Second Party Reference Name ]] 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*. [[ Second Party Reference Name ]] acknowledges this Agreement may be terminated immediately 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, [[ Second Party Reference Name ]] 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.

**Certification as to Boycotting Energy Companies.** To the extent that Chapter 2276, *Texas Government Code*,is applicable to this Agreement, [[ Second Party Reference Name ]] verifies that (a) it does not boycott energy companies, and (b) it will not boycott energy companies during the term of this Agreement. [[ Second Party Reference Name ]] acknowledges this Agreement may be terminated and payment withheld of this verification is inaccurate.

**Involvement in Human Trafficking.** [[ Doing Business As (Primary First Party) ]] 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*, [[ Second Party Reference Name ]] 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. [[ Doing Business As (Primary First Party) ]] and [[ Second Party Reference Name ]] can change their respective notice address by sending to the other Party a notice of the new address. Notices should be addressed as follows:

**[[ Doing Business As (Primary First Party) ]]:**

[[ Name (Primary First Party) ]]

[[ 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

**[[ Second Party Reference Name ]]:**

[[ 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 [[ Doing Business As (Primary First Party) ]]:

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 [[ Doing Business As (Primary First Party) ]] before the Agreement is considered in effect.
3. Permitting unilateral modification of the Agreement by **FACILITY**.
4. Requiring [[ Doing Business As (Primary First Party) ]] to maintain any type of insurance either for [[ Doing Business As (Primary First Party) ]]’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 [[ Doing Business As (Primary First Party) ]] 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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| --- | --- | --- |
| **[[ Name (Primary First Party) ]]** |  | **[[ Second Party Name ]]** |
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| {{Sig\_es\_:signer1:signature}} |  | {{Sig\_es\_:signer2:signature}} |
| Signature |  | Signature |
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| Title |  | Title |
|  |  |  |
| {{Dte\_es\_:signer1:date}}      |  | {{Dte\_es\_:signer2:date}}     |
| Date |  | Date |