



TEXAS A&M UNIVERSITY-COMMERCE FACILITY USE ADDENDUM

The following terms and conditions are incorporated into and form a part of the agreement (the "Agreement") to which this Addendum is attached. To the extent the language in this Addendum is in conflict with any language in the Facility's Contract Form, the language in this Addendum will control. "University" means Texas A&M University-Commerce, a member of The Texas A&M University System, an agency of the State of Texas and "Facility" means _____.

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.

The Facility's Contract Form is, with the exceptions noted herein, generally acceptable to A&M-Commerce. Nonetheless, because certain standard clauses that may appear in the Facility's Contract Form cannot be accepted by A&M-Commerce, because of its status as an agency of the State of Texas, and in consideration for the convenience of using provisions in the Facility's Contract Form instead of negotiating a separate contract document, the parties agree that none of the provisions listed below, if they appear in the Facility's Contract Form, shall have any effect or be enforceable against A&M-Commerce:

1. Requiring A&M-Commerce to maintain any type of insurance either for A&M-Commerce's benefit or for the Facility's benefit.
2. Renewing or extending the Agreement beyond the contract term or automatically continuing the contract period from term to term.
3. Requiring or stating the terms of the Facility's Contract Form shall prevail over the terms of the Purchase Order or this Addendum in the event of conflict.
4. Requiring the application of the law of any state other than Texas in interpreting or enforcing the Agreement, or resolving any dispute under the Agreement. The Agreement and the obligations of the parties shall be construed and enforced in accordance with the laws of the State of Texas.
5. Releasing the Facility or any other entity or person from its legal liability, or limiting liability, for unlawful or negligent conduct or failure to comply with any duty recognized or imposed by applicable law.
6. Requiring any total or partial compensation or payment for lost profit or liquidated damages by A&M-Commerce if the Agreement is terminated before the end of the contract term.
7. Changing the time period within which claims can be made or actions can be brought under the laws of the State of Texas.
8. Binding A&M-Commerce to any arbitration provision or to the decision of any arbitration board, commission, panel or other entity.
9. Obligating A&M-Commerce to pay costs of collection or attorneys' fees.
10. Requiring A&M-Commerce to provide warranties.
11. Obligating A&M-Commerce to indemnify, defend or hold harmless any party.
12. Granting a security interest in A&M-Commerce's property or placing a lien on A&M-Commerce's property.

Direct Bill Account: All charges accrued and payable by University will be applied to the master account and direct billed. If an existing direct bill account is not already established and on file, University can submit information required to establish a direct bill account prior to the Agreement start date.

Payment of Master Account: The outstanding balance of University'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 University. Payment will be made upon submittal and approval of a valid invoice. The University shall make payment in accordance with Chapter 2251 of the Texas Government Code. It is the policy of the State of Texas to make payment on a properly prepared and submitted invoice within thirty (30) days of the latter of any final acceptance of performance or the receipt of a properly submitted invoice.

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

University, 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 University. In the event University 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.

Miscellaneous Provisions:

Payment Terms: Payment will be made upon submittal and approval of a valid invoice. A&M-Commerce shall make payment in accordance with Chapter 2251 of the Texas Government Code. It is the policy of the State of Texas to make payment on a properly prepared and submitted invoice within thirty (30) days of the latter of any final acceptance of performance or the receipt of a properly submitted invoice. Facility agrees that, to the extent Facility owes any debt or delinquent taxes to the State of Texas, any payments or other amounts Facility is otherwise owed under this Contract shall be applied toward the debt or delinquent taxes until the debt or delinquent taxes are paid in full. Facility agrees to comply with all applicable laws regarding satisfaction of debts or delinquencies to the State of Texas.

Alternative Dispute Resolution: The dispute resolution process provided for in Chapter 2260 shall be used, as further described herein, to attempt to resolve a claim for breach of contract asserted by the Facility under the Agreement. If the Facility's claim for breach of contract cannot be resolved by the Parties in the ordinary course of business, it shall be submitted to the negotiation process provided in Chapter 2260. To initiate the process, the Facility shall submit written notice, as required by Chapter 2260, to the Vice President of Business Administration or his or her designee. The notice shall also be given to the individual identified in the Agreement for receipt of notices. Compliance by the Facility with Chapter 2260 is a condition precedent to the filing of a contested case proceeding under Chapter 2260.

Mandatory Venue: The substantive laws of the State of Texas (and not its conflicts of law principles), USA, govern all matters arising out of or relating to this Agreement and all of the transactions it contemplates. Pursuant to Section 85.18 (b), Texas Education Code, venue for a state court suit filed against The Texas A&M University System, any member of The Texas A&M University System, or any officer or employee of The Texas A&M University System is in the county in which the primary office of the chief executive officer of the system or

member, as applicable, is located. At execution of this Agreement, such county is Hunt County, Texas. Venue for any suit brought against The Texas A&M University System in federal court must be in the Houston Division of the Southern District of Texas.

Tax Exempt Status: As an agency of the State of Texas, A&M-Commerce is tax exempt in the State of Texas. Tax exemption certification will be furnished upon request.

Loss of Funding: Performance by A&M-Commerce under the Agreement may be dependent upon the appropriation and allotment of funds from federally funded programs and/or by the Texas State Legislature (the "Legislature"). In the event a curtailment of federally funded programs occurs, or in the event state appropriations are unavailable, then A&M-Commerce will issue written notice to the Facility and A&M-Commerce may terminate the Agreement without further duty or obligation hereunder. The Facility acknowledges that appropriation of funds is beyond the control of A&M-Commerce.

Non-Waiver: The Facility expressly acknowledges A&M-Commerce is an agency of the State of Texas and nothing in the Agreement will be construed as a waiver or relinquishment by A&M-Commerce of its right to claim such exemptions, privileges, and immunities as may be provided by law. Neither the execution of the Agreement by **University** nor any other conduct, action, or inaction of any representative of A&M-Commerce relating to the Agreement constitutes or is intended to constitute a waiver of A&M-Commerce's or the State's sovereign immunity to suit.

Child Support Certification: Under Section 231.006, Texas Family Code, the Facility or applicant certifies that the individual or business entity named in this Agreement, bid, or application is not ineligible to receive the specified grant, loan, or payment and acknowledges that this Agreement may be terminated and payment may be withheld if this certification is inaccurate.

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

Public Information:

- A. Facility acknowledges that A&M System is obligated to strictly comply with the Public Information Act, Chapter 552, Texas Government Code, in responding to any request for public information pertaining to this Agreement, as well as any other disclosure of information required by applicable Texas law.
- B. Upon A&M System's written request, Facility will promptly provide specified contracting information exchanged or created under this Agreement for or on behalf of A&M System.
- C. Facility acknowledges that A&M System may be required to post a copy of the fully executed Agreement on its Internet website in compliance with Section 2261.253(a)(1), Texas Government Code.
- D. The requirements of Subchapter J, Chapter 552, Texas Government Code, may apply to this agreement and the Facility agrees that the agreement can be terminated if the Facility knowingly or intentionally fails to comply with a requirement of that subchapter.

Force Majeure: Neither party is required to perform any term, condition, or covenant of the 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.

Entire Agreement: This Addendum and the Facility's Contract Form constitute the entire Agreement between the parties and may not be waived or modified except by a written agreement signed by the parties.

Savings Clause: If a court of competent jurisdiction finds any provision of this Addendum and the Facility's Contract Form illegal, ineffective or beyond contractual authority of either party, then the offending provision will be stricken and the remainder of the agreement between the parties will remain in effect.

Prohibited Use Of Appropriated Or Other Funds Under Control Of State Agency; Lobbying: The Facility represents and warrants that ordering entities' payments to the Facility and Facility's receipt of appropriated or other funds under any of this or any resulting agreement are not prohibited by Texas Government Code, Section 556.005 or Section 556.008.

Prohibition On Contracts With Companies Boycotting Israel: To the extent that Texas Government Code, Chapter 2270 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.

Contractor Certification Regarding Business With Certain Countries And Organizations: Pursuant to Subchapter F, Chapter 2252, Texas Government Code, Facility certifies Facility (1) 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.

Prohibition On Contracts Related To Persons Involved In Human Trafficking: Under Section 2155.0061, Government Code, the Facility certifies that the individual or business entity named in this contract is not ineligible to receive the specified contract and acknowledges that this contract may be terminated and payment withheld if this certification is inaccurate.

Records Retention: Facility will preserve all contracting information, as defined under Texas Government Code, Section 552.003 (7), related to the Agreement for the duration of the Agreement and for seven years after the conclusion of the Agreement.

Not Eligible for Rehire: Facility is responsible to ensure that employees participating in work for any A&M System member have not been designated by the A&M System as Not Eligible for Rehire as defined in System policy 32.02, Section 4. Non-conformance to this requirement may be grounds for termination of this agreement.

Notices: Any notices, consents, approvals, demands, requests or other communications provided for or permitted to be given under any of the provisions of the 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, facsimile transmission, email or other commercially reasonable means and will be effective when actually received. University 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:

If to University: Attn: Mr. Travis Ball
 Chief Procurement Officer
 P.O. Box 3011
 Commerce, TX 75429
 travis.ball@tamuc.edu

If to Facility: _____
 Attn: _____

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 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 Texas A&M University System (“TAMUS”) or TAMUS Board of Regents, nor any employee, or person, whose salary is payable in whole or in part by University or TAMUS, 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.

In WITNESS WHEREOF, the parties have caused this Agreement to be duly executed intending to be bound thereby.

FACILITY:

TEXAS A&M UNIVERSITY-COMMERCE:

Signed: _____

Signed: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____