

FACILITIES USE AGREEMENT

(Member as Licensor)

(Not to Exceed 1 year or \$50,000/year)

This Facilities Use Agreement ("Agreement") is entered into this _____ day of _____, 20__ between _____, a member of The Texas A&M University System, an agency of the State of Texas ("MEMBER") and _____ ("Licensee").

In consideration of the covenants and agreements contained herein, MEMBER and Licensee agree as follows:

1. Grant of License: MEMBER grants to Licensee a license to use the space described below, subject to the terms and conditions of this Agreement, for the purpose of _____ (the "Event"). Licensee shall not change the function or activity described herein without a written amendment to this Agreement signed by MEMBER and Licensee.

2. Licensed Space: This license covers only the following space, and as allowed per the attached Addendum (collectively, the "Licensed Space"):

_____ maximum occupancy
_____ maximum occupancy
_____ maximum occupancy

This Agreement does not entitle Licensee or Licensee's officers, employees, agents, contractors, or invitees to occupy, enter or use any area, facility or equipment not included within the above description of the Licensed Space.

3. Term: The period during which Licensee is entitled to use the Licensed Space is herein called the "Term." All set-up and take-down activities in the Licensed Space shall occur during the Term. The Term of this Agreement is as follows:

<u>Date(s)</u>	<u>Commencement Time</u>	<u>Termination Time</u>
_____	_____	_____

4. Fee: Licensee agrees to pay MEMBER a \$_____ fee as consideration for Licensee's use of the Licensed Space for the purpose described above (the "Fee"). The Fee shall be paid no less than five business days prior to the Event.

5. Deposit: At the time of execution of this Agreement, Licensee shall pay MEMBER, as a deposit, the sum of \$_____ which shall be credited to expenses such as the Fee or any other amounts due to MEMBER hereunder.

6. Overtime: Licensee shall pay to MEMBER as an additional fee the sum of \$_____ for each hour or fraction of an hour that Licensee or Licensee's officers, employees, agents, contractors, or invitees remain in the Licensed Space beyond the Term.

7. Payments: Licensee shall make all deposits and payments under this Agreement by certified check, bank money order, or business check made payable to "_____" and delivered to MEMBER at the following address:

8. Utilities, Operating Personnel, Services, and Equipment: MEMBER shall furnish customary heating, lighting, water, electricity, and air conditioning for the Licensed Space. MEMBER shall have the sole right to provide, at Licensee's expense, personnel and services (including custodial) in connection with Licensee's use of the Licensed Space. MEMBER may also provide, at Licensee's expense, such equipment as Licensee shall timely and reasonably request at rates specified on the Services and Equipment Schedule attached hereto as Schedule "A" and incorporated herein by reference. Any expenses due from Licensee shall, at MEMBER's option, be paid upon presentation of an invoice at the conclusion of the Event or within 10 days following Licensee's receipt of an invoice from MEMBER.

9. Insurance: Licensee shall obtain and maintain during the Term of this Agreement or longer a commercial general liability insurance policy that designates _____, the Board of Regents of The Texas A&M University System, and The Texas A&M University System as additional insureds, and that provides at least the following minimum coverage: \$1,000,000.00 per occurrence, \$2,000,000 aggregate, and \$1,000,000

personal/advertising injury. Such coverage shall be written on an occurrence basis and shall not be cancelable without 30 days' prior written notice to MEMBER. All coverage shall be underwritten by companies authorized to do business in the State of Texas and currently rated A- or better by A.M. Best Company or otherwise acceptable to MEMBER. By requiring such minimum insurance coverage, MEMBER shall not be deemed or construed to have assessed the risk that may be applicable to Licensee under this Agreement. Licensee shall assess its own risks and if it deems appropriate and/or prudent, maintain higher limits and/or broader coverage. Licensee is not relieved of any liability or other obligations assumed pursuant to this Agreement by reason of its failure to obtain or maintain insurance in sufficient amounts, duration, or types.

Licensee shall provide to MEMBER a certificate of insurance attesting to the existence of a policy or policies providing coverage described in the preceding paragraph no later than five business days prior to the Event. Licensee shall provide to MEMBER a certified copy of said policy or policies upon request. Failure to comply with these requirements may result in termination of this Agreement for cause by MEMBER.

10. Alcoholic Beverages: Licensee will not sell or give away or allow beer, wine, or any beverage of alcoholic content to be sold, given away, sampled, or consumed in the Licensed Space or any part of the surrounding premises without prior written consent of MEMBER and then only in accordance with the rules and regulations promulgated by MEMBER and in compliance with the laws of the State of Texas, including the Policies and Regulations of the Board of Regents of The Texas A&M University System. Licensee shall be solely responsible for procuring any and all necessary licenses, including but not limited to licenses from the Texas Alcohol Beverage Commission, relating to the serving of alcohol and shall obtain Liquor Liability Insurance for the Event if alcoholic beverages will be served. Licensee agrees that any Event at which beverages of alcoholic content are served will be monitored by police or security personnel selected by MEMBER. All charges for the services of police or security personnel shall, at MEMBER's option, be paid by Licensee in advance, upon presentation of an invoice at the conclusion of the Event, or within 10 days following Licensee's receipt of an invoice for such charges.

11. Occupancy Capacity: Licensee shall not admit into the Licensed Space at any time a larger number of persons than approved by MEMBER. For this Event, the maximum approved occupancy for each room is set forth in Section 2 above.

12. Care of Property: Licensee shall take good care of the Licensed Space and all property located therein and shall leave the Licensed Space clean and orderly after use. Licensee shall be liable for the cost of any repairs, restorations or replacements to the Licensed Space or MEMBER's property necessitated by Licensee's or Licensee's officers, employees, agents, contractors, or invitees' use, and Licensee shall reimburse MEMBER for all such costs within three days after delivery of an invoice therefor.

13. Notices: Any notices, consents, or approvals required or permitted hereunder shall be properly given if in writing and personally delivered or delivered by certified mail, return receipt requested, and addressed to the following (unless other provisions specifically set out elsewhere in this Agreement):

To MEMBER:

Attn: _____

with a copy to:

The Texas A&M University System
Office of General Counsel
Attn: System Real Estate Office
301 Tarrow, 6th Floor
College Station, Texas 77840-7896
Phone: (979) 458-6350
Fax: (979) 458-6359
Email: sre@tamus.edu

To Licensee:

Attn: _____

14. Custody of Property: In the receipt, handling, care, or custody of property of any kind shipped or otherwise delivered to the Licensed Space by or for Licensee, MEMBER shall act solely for the accommodation of Licensee and neither MEMBER nor any of its officers, employees or agents shall be a bailee or liable for any loss, damage, or injury to such property.

15. Control of Premises and Right to Enter: In permitting the use of the Licensed Space, MEMBER specifically retains the right to enforce any and all laws, rules and regulations applicable to the Licensed Space, and representatives of MEMBER may enter any portion of the Licensed Space at any time and on any occasion without any restrictions.

16. Property Restrictions: Licensee shall not use or permit the Licensed Space to be used for any purpose other than that set forth herein. Licensee further covenants and agrees:

- a. Licensee's use of the Licensed Space shall be in accordance with MEMBER Rules and The Texas A&M University System Policies and Regulations, which can be found at <http://policies.tamus.edu>.
- b. Appropriate standards of dress and behavior will be observed at all times in the Licensed Space.
- c. All minors (children under the age of 18) involved in or attending the Event shall be under the care and supervision of an adult at all times while in the Licensed Space.
- d. All activities in the Licensed Space shall be conducted so as not to endanger any person or damage any property therein.
- e. All aisles, corridors, passages, vestibules, elevators, and stairways shall be kept free and clear of obstructions and shall not be used other than for ingress and egress.
- f. No alterations shall be made to the Licensed Space.
- g. No confetti, glitter, glue, or flammable tissue paper, crepe paper, or material for decorative purposes or any combustible liquid or substance or laser lighting equipment shall be used or permitted unless first been approved by MEMBER in writing.
- h. No candles are permitted in the Licensed Space.
- i. No carts, dollies or other equipment with metal casters are permitted in the Licensed Space or the surrounding premises.
- j. No smoking is allowed in or around the Licensed Space or the surrounding premises.
- k. No animals (except service animals) are allowed in or around the Licensed Space or the surrounding premises.
- l. No signs, messages or other materials may be posted, displayed, distributed, or announced in, on or adjacent to, the Licensed Space or surrounding premises without prior written approval of MEMBER.
- m. Outside audio-visual equipment such as projectors, etc., may not be brought into the Licensed Space. House equipment, with the exception of computers, must be used and operated by MEMBER personnel unless other arrangements are approved by MEMBER in writing.
- n. Any articles, exhibits, fixtures, materials, or displays of Licensee that have been previously approved by MEMBER shall be brought into or taken out of the Licensed Space only at such entrances as may be designated by MEMBER.

17. Indemnification: LICENSEE AGREES TO INDEMNIFY, DEFEND, AND HOLD HARMLESS MEMBER, THE TEXAS A&M UNIVERSITY SYSTEM, AND THEIR OFFICERS, REGENTS, EMPLOYEES, AND AGENTS AGAINST ANY AND ALL CLAIMS, DEMANDS, CAUSES OF ACTION, AND JUDGMENTS: FOR TAXES, LICENSE FEES, EXCISES, FINES AND PENALTIES; FOR SUPPLIES, SERVICES, OR MERCHANDISE PURCHASED BY LICENSEE; FOR WAGES OR FRINGE BENEFITS OF LICENSEE'S EMPLOYEES OR CONTRACTORS; OR FOR INJURY OR DEATH OF ANY PERSON OR DAMAGE TO ANY PROPERTY THAT DIRECTLY OR INDIRECTLY RESULT FROM THE ACTS, OMISSIONS OR USE OF THE LICENSED SPACE OR SURROUNDING PREMISES BY LICENSEE OR LICENSEE'S OFFICERS, EMPLOYEES, AGENTS, CONTRACTORS, OR INVITEES. LICENSEE WILL NOT DO OR PERMIT TO BE DONE ANYTHING IN OR UPON ANY PORTION OF THE LICENSED SPACE OR SURROUNDING PREMISES OR BRING OR KEEP ANYTHING THEREIN OR THEREON WHICH WILL IN ANY WAY CONFLICT WITH THE CONDITIONS OF ANY INSURANCE POLICIES INSURING THE LICENSED SPACE OR SURROUNDING PREMISES OR ANY PART THEREOF AGAINST LOSS.

18. Cancellation for Cause by MEMBER: MEMBER may cancel this Agreement for cause, such as if Licensee fails to comply with the terms and conditions of this Agreement, fails on request to demonstrate in a manner acceptable to MEMBER that Licensee is willing and able to perform adequately all required duties and responsibilities related to the Event, or if any other similar cause occurs that justifies cancellation, in the discretion of MEMBER. In any such event, no deposit or fee refund shall be made, and all fees and expenses called for by this Agreement, including reimbursement for any disbursements or expenses incurred by MEMBER in connection herewith, shall be made payable immediately to MEMBER by Licensee as liquidated damages and not by way of penalty.

19. Force Majeure: MEMBER may cancel or temporarily suspend the performance of any part of this Agreement without advance notice upon the occurrence of conditions or events that make performance not feasible, including without limitation, acts or omissions of government or military authority, acts of God, fires, floods, riots, wars, terrorist acts, or the requisitioning of the Licensed Space by any governmental agency ("*Force Majeure*"). In the event of a *Force Majeure*, this Agreement shall terminate and no deposit or fee refund shall be made. Licensee hereby waives any claims for damages or compensation it may have against MEMBER should this Agreement be so terminated.

20. Cancellation by Licensee or Failure to Take Possession: Unless otherwise agreed to by the parties, if Licensee shall cancel this Agreement or fail to take possession of or use the Licensed Space covered by this Agreement, no deposit or fee refund shall be made, and all fees and expenses called for by this Agreement, including reimbursement for any disbursements or expenses incurred by MEMBER in connection herewith, shall be paid to MEMBER by Licensee as liquidated damages and not by way of penalty within 10 days following Licensee's receipt of a statement for such charges.

21. Assumption of Risk: Licensee assumes the risk of any loss or damage to its property or the property of any person or entity authorized by it to be in the Licensed Space. MEMBER and its officers, employees and agents shall not be responsible or liable for any loss of, or damage to, property while in the Licensed Space regardless of how the loss or damage is sustained.

22. Removal of Property: In the event Licensee fails, neglects, or refuses to remove its property from the Licensed Space prior to the expiration of the Term, said property shall be deemed abandoned and MEMBER shall have the right to move, place in storage, or otherwise dispose of any such property at the sole cost and expense of Licensee. Licensee hereby irrevocably constitutes and appoints MEMBER as its special attorney in fact to do and perform all acts necessary in removing, storing, and disposing of said abandoned personal property and to execute and to deliver a bill of sale therefor.

23. Waivers and Modifications: No waiver of any provision hereof shall be effective unless stated in writing and signed by MEMBER and Licensee. No such waiver shall constitute a waiver of the same provision on a subsequent occasion nor of any other provision of this Agreement. The delay or failure of either party to assert or exercise any right, remedy, or privilege hereunder shall not constitute a waiver of such right, remedy, or privilege.

24. Miscellaneous Provisions:

- a. This Agreement constitutes the entire agreement between the parties with respect to the subject matter and no prior agreement, written or oral, will be effective to vary the terms of this Agreement.
- b. No amendment to this Agreement will be effective unless reduced to writing and signed by an authorized representative of each party.
- c. This Agreement shall be governed by, and construed in accordance with, the laws of the State of Texas.
- d. By statute, mandatory venue for all legal proceedings against MEMBER is to be in the county in which the primary office of the chief executive officer is located.
- e. Neither party may assign this Agreement, in whole or in part, without the prior written consent of the other party.
- f. All contracts related to the Event, including contracts between Licensee and caterers, speakers, performers, managers and others, must be made available to MEMBER for review prior to the Event.
- g. Any claim or cause of action that accrues to any party under this Agreement shall survive the termination of this Agreement.
- h. Should MEMBER commence suit against Licensee under the terms of this Agreement because of Licensee's breach thereof, Licensee agrees to pay MEMBER's reasonable attorneys' fees, costs, and expenses.
- i. The invalidity or illegality of any part of this Agreement shall not affect the validity or force of any other part hereof.
- j. The paragraph titles herein are for convenience only and do not define, limit, or construe the contents of such paragraphs.
- k. Time, and especially time of payment of monies due from Licensee, shall be of the essence of this Agreement.
- l. The parties shall be independent contractors in the performance of this Agreement and nothing herein is intended or may be construed to make either party the employee, agent, partner, or representative of the other.

25. Force and Effect: This Agreement shall have no force or effect unless fully executed by both parties. Licensee covenants and agrees that its failure to fully and faithfully perform all covenants and agreements hereunder shall excuse MEMBER's continued performance.

26. Publicity: Licensee shall not use MEMBER's name, logo or other likeness in any press release, marketing materials or other public announcement without receiving MEMBER's prior written approval.

27. Status as State Agency: Licensee expressly acknowledges that MEMBER is an agency of the State of Texas and nothing in this Agreement will be construed as a waiver or relinquishment by MEMBER of its right to claim such exemptions, privileges, and immunities as may be provided by law.

28. Dispute Resolution: Licensee must use the dispute resolution process provided in Chapter 2260 of the Texas Government Code to attempt to resolve a dispute arising under this Agreement and this process is a required prerequisite to suit in accordance with Chapter 107, Texas Civil Practices and Remedies Code. Licensee must submit written notice of a claim of breach of contract to the designated official of MEMBER, who shall examine Licensee's claim and any counterclaim and negotiate with Licensee in an effort to resolve the claim.

29. Addendum: The attached COVID-19 Screening Addendum to Facilities Use Agreement ("Addendum") must be signed by Licensee and each person attending the Event ("Attendee") certifying that they are COVID-19 free at the time of the Event. The Addendum shall be signed by each Attendee prior to entering the Licensed Space. Licensee is responsible for obtaining signatures of Attendees on the Addendum and shall provide the signed Addendums to MEMBER.

30. AGREEMENT NULL AND VOID: THE PARTIES ACKNOWLEDGE THAT THIS AGREEMENT IS NULL AND VOID IF THE TERM EXCEEDS ONE YEAR OR THE FEE EXCEEDS \$50,000.

ACCEPTED AND AGREED this ___ day of _____, 20__:

MEMBER:

By: _____

Name: _____

Title: _____

LICENSEE: _____

By: _____

Name: _____

Title: _____

APPROVAL RECOMMENDED:

By: _____

Name: _____

Title: _____

Schedule "A"

Services and Equipment Schedule