

HOTEL CONTRACT ADDENDUM

This addendum (“Addendum”) amends and supplements the standard contract and/or purchase order form (“Hotel Contract”) provided by (“**Hotel**”) entered into between **Texas A&M Engineering Experiment Station** a member of The Texas A&M University System (“A&M System”) and an agency of the State of Texas (“**MEMBER**”), and the **Hotel** located at . All terms used herein and not otherwise defined shall have the same meaning as in the Hotel Contract. This Addendum is incorporated into the Hotel Contract and in the event of any conflict in the terms of the Hotel Contract and the terms of this Addendum, the terms of this Addendum shall in all aspects govern and control. **MEMBER** and **Hotel** may be individually referred to as “Party” or collectively referred to as “Parties.” Both Parties agree that the Hotel Contract is hereby amended and supplemented as follows:

1. This Addendum is incorporated into the Hotel Contract and in the event of any conflict in the terms of the Hotel Contract and the terms of this Addendum, the terms of this Addendum shall in all aspects govern and control.
2. None of the provisions listed below, if they appear in the Hotel Contract, have any effect or are enforceable against **MEMBER**:
 - a. Requiring **MEMBER** to maintain any type of insurance either for **MEMBER's** benefit or for the **Hotel's** benefit.
 - b. Renewing or extending the Hotel Contract beyond the contract term or automatically continuing the contract period from term to term.
 - c. Requiring or stating the terms of the Hotel Contract shall prevail over the terms of the purchase order or this Addendum in the event of conflict.
 - d. Requiring the application of the law of any state other than Texas in interpreting or enforcing the Hotel Contract, or resolving any dispute under the Hotel Contract. The Hotel Contract and the obligations of the parties under this Hotel Contract shall be construed and enforced in accordance with the laws of the State of Texas.
 - e. Releasing the **Hotel** 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.
 - f. Requiring any total or partial compensation or payment by **MEMBER** for damages in excess of the actual losses incurred by the **Hotel** if the Hotel Contract is terminated before the end of the contract term.
 - g. Changing the time period within which claims can be made or actions can be brought under the laws of the State of Texas.
 - h. Binding **MEMBER** to any arbitration provision or to the decision of any arbitration board, commission, panel or other entity.
 - i. Obligating **MEMBER** to pay costs of collection or attorneys’ fees.
 - j. Obligating **MEMBER** to indemnify, defend or hold harmless any party.
3. The following language is added to the Hotel Contract:

Cancellation. In the event **MEMBER** must cancel the Hotel Contract, **Hotel** will make every effort to resell the space (including, but not limited to, sleeping rooms, meeting rooms, and/or conference rooms)

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

MEMBER, at any time prior to the arrival date with written notice, may cancel the Hotel Contract without liability or penalty, in the event one or more of the following occur:

- i. 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, **Hotel** agrees to return any deposits paid by **MEMBER**. In the event **MEMBER** decides to continue with its reserved use of the **Hotel** despite such circumstances, **Hotel** 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.
- ii. There is a change in ownership or management of the **Hotel** prior to the scheduled arrival date.
- iii. **Hotel** 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.

Direct Bill Account. If there are any charges which accrue and are payable by **MEMBER**, they will be applied to a master account and direct billed. If an existing direct bill account is not already established and on file, **MEMBER** will submit information required to establish a direct bill account prior to the Hotel Contract start date. Under this Hotel Contract, the **MEMBER** credit card shall only be used to secure the room block. All room charges will be paid by each individual reserving a room.

Payment Of Master Account. The outstanding balance of **MEMBER**'s direct bill account, if any, and 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, **HOTEL** shall invoice such remaining charges to **MEMBER**. 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*.

Payment Terms. All payments required under the Hotel Contract are due and payable on or before thirty (30) days from the date **MEMBER** receives a true and correct invoice for same. Notwithstanding the foregoing, all invoices shall be subject to the Texas Prompt Payment laws.

Insurance. The liability of the A&M System and its members for personal injury and property damage is controlled by the Texas Tort Claims Act, Texas Civil Practice and Remedies Code, Chapter 101, Section 101.021. The limits of liability are \$250,000 for each person, \$500,000 for each single occurrence for bodily injury or death and \$100,000 for each single occurrence for injury to or destruction of property. Following this limited exposure, the A&M System and its members, as state agencies, are protected by the doctrine of sovereign immunity, and as such, is self-insured up to the aforementioned limits.

Governing Law and Venue. The validity of the Hotel Contract and all matters pertaining to this Hotel Contract, including but not limited to, matters of performance, nonperformance, 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. Pursuant to Section 85.18, *Texas Education Code*, venue for any suit filed against **MEMBER** shall be in the county in which the primary office of the chief executive officer of **MEMBER** is located.

Tax Exempt Status. As an agency of the State of Texas, **MEMBER** is tax exempt in the State of Texas. Tax exemption certification will be furnished upon request.

State Auditor's Office. **Hotel** understands that acceptance of funds under this Hotel Contract 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. **Hotel** agrees to cooperate with the Auditor in the conduct of the audit or investigation, including without limitation, providing all records requested. **Hotel** will include this provision in all contracts with permitted subcontractors.

Dispute Resolution. To the extent that Chapter 2260, Texas Government Code, is applicable to this Hotel Contract, 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 **MEMBER** and **Hotel** to attempt to resolve any claim for breach of contract made by **Hotel** that cannot be resolved in the ordinary course of business. **Hotel** shall submit written notice of a claim of breach of contract under this Chapter to the Contracts Officer of **MEMBER**, who shall examine **Hotel's** claim and any counterclaim and negotiate with **Hotel** in an effort to resolve the claim. This provision and nothing in this Hotel Contract waives **MEMBER's** sovereign immunity to suit or liability and **MEMBER** has not waived its right to seek redress in the courts.

Notices. Any notice required or permitted under this Hotel Contract 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.

MEMBER and **Hotel** can change their respective notice address by sending to the other Party a notice of the new address. Notices should be addressed as follows:

MEMBER: **Texas A&M Engineering Experiment Station**
 1111 Rellis Parkway
 Bryan, TX 77807
 Attention: _____
 Phone: _____
 Email: _____

HOTEL:

 Attention:
 Phone:

Email:

Force Majeure. Neither party shall be held liable or responsible to the other party nor be deemed to have defaulted under or breached this Hotel Contract for failure or delay in fulfilling or performing any obligation under this Hotel Contract 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).

Non-Assignment. Hotel shall neither assign its rights nor delegate its duties under this Hotel Contract without the prior written consent of **MEMBER**.

Entire Agreement. This Addendum and the **Hotel's** Contract Form constitute the entire and only agreement between the parties hereto and supersedes any prior understanding, written or oral agreements between the parties, or "side deals" which are not described in this Hotel Contract. This Hotel Contract may be amended only by a subsequent written agreement signed by authorized representatives of both parties.

Authority to Contract: Each party represents and warrants that it has full right, power and authority to enter into and perform its obligations under this AgreementHotel Contract, and that the person signing this AgreementHotel Contract is duly authorized to enter into this AgreementHotel Contract on its behalf.

Use of Name. Each party acknowledges that all rights in any trademarks, service marks, slogans, logos, designs, and other similar means of distinction associated with that party (its "Marks"), including all goodwill pertaining to the Marks, are the sole property of that party. Neither party may use the Marks of the other without the advance written consent of that party, except that each party may use the name of the other party in factual statements that, in context, are not misleading.

Severability. In case any one or more of the provisions contained in this Hotel Contract shall, for any reason, be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provisions hereof, and this Hotel Contract shall 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 Hotel Contract that are required by changes in federal or state law or regulations are automatically incorporated into the Hotel Contract without written amendment hereto and shall become effective on the date designated by such law or by regulation.

Limitations. As an agency of the state of Texas, there are constitutional and statutory limitations on the authority of **MEMBER** to enter into certain terms and conditions of this Hotel Contract, including, but not limited to, those terms and conditions relating to liens on **MEMBER'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 **MEMBER** except to the extent authorized by the Constitution and the laws of the state of Texas. Neither the execution of this Hotel Contract by **MEMBER** nor any other conduct, action, or inaction of any representative of **MEMBER** relating to this Hotel Contract constitutes or is intended to constitute a waiver of **MEMBER's** or the state's sovereign immunity.

Compliance with Laws. Each Party hereto shall comply with all federal, state, and local laws, rules, and regulations applicable to the performance of its obligations under this Hotel Contract.

Public Information. **Hotel** acknowledges that **MEMBER** 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 Hotel Contract, as well as any other disclosure of information required by applicable Texas law. Upon **MEMBER's** written request, **Hotel** will promptly provide specified contracting information exchanged or created under this Hotel Contract for or on behalf of **MEMBER** to **MEMBER** in a non-proprietary format acceptable to **MEMBER** that is accessible by the public. **Hotel** acknowledges that **MEMBER** may be required to post a copy of the fully executed Hotel Contract on its Internet website in compliance with Section 2261.253(a)(1), *Texas Government Code*. The requirements of Subchapter J, Chapter 552, *Texas Government Code*, may apply to this Hotel Contract and **Hotel** agrees that this Hotel Contract can be terminated if **Hotel** knowingly or intentionally fails to comply with a requirement of that subchapter.

Payment of Debt or Delinquency to the State. Pursuant to Section 2107.008 and 2252.903, *Texas Government Code*, **Hotel** agrees that any payments owing to **Hotel** under the Hotel Contract may be applied directly toward certain debts or delinquencies that **Hotel** owes the State of Texas or any agency of the State of Texas regardless of when it arises, until such debt or delinquency is 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*, **Hotel** certifies that it is not ineligible to receive the payments under this Hotel Contract and acknowledges that this Hotel Contract may be terminated and payment may be withheld if this certification is inaccurate.

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

Certification Regarding Business with Certain Countries and Organizations. **Hotel** 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. **Hotel** acknowledges this Hotel Contract may be terminated immediately if this certification is inaccurate.

Conflict of Interest. **Hotel** certifies, to the best of its knowledge and belief, that no member of the A&M System Board of Regents, nor any employee of **MEMBER** or A&M System, has a direct or indirect financial interest in **Hotel** or in the transaction that is the subject of the Agreement.

Prohibition on Contracts with Companies Boycotting Israel. To the extent that Chapter 2271, Texas Government Code, is applicable to this Hotel Contract, **Hotel** certifies that (a) it does not currently boycott Israel, and (b) it will not boycott Israel during the term of this Hotel Contract. **Hotel** acknowledges this Hotel Contract may be terminated and payment withheld if this certification is inaccurate.

Verification Regarding Discrimination Against Firearm Entities and Trade Associations. To the extent that Chapter 2274, Texas Government Code, is applicable to this Agreement, **Hotel** verifies that (1) it does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association, and (2) will not discriminate during the term of this Agreement against a firearm entity or firearm trade association.

Verification Regarding Boycotting Energy Companies. To the extent that Chapter 2274, Texas Government Code, is applicable to this Hotel Contract, **Hotel** verifies that (1) it does not boycott energy companies, and (2) it will not boycott energy companies during the term of this Hotel Contract. **Hotel** acknowledges this Hotel Contract may be terminated and payment withheld if this verification is inaccurate.

ACCEPTED & AGREED:

Texas A&M Engineering Experiment Station

By: _____
Name: _____
Title: _____
Date: _____

By: _____
Name: _____
Title: _____
Date: _____