**OFF-CAMPUS FACILITIES**

**CONTRACT ADDENDUM**

In exchange for Stephen F. Austin State University’s (“University”) agreement (iContracts ######) to lease facilities from this facilities provider (“Vendor”), the parties hereby warrant, represent, covenant, and agree to the following:

I. Vendor Responsibilities and Representations:

Vendor represents the following:

1. That measures have been taken to provide adequate fire safety for University employees, staff, faculty and students utilizing Vendor’s facilities.

2. That Vendor’s facilities meet all requirements of the prevailing local fire and building codes.

3. That, to the extent required by the applicable fire safety code(s), Vendor’s facilities have been inspected for fire safety within the previous 6 months, and the facilities were determined to be compliant with applicable fire safety code.

4. That all of the services to be performed by the Vendor under or pursuant to this contract shall be of the standard and quality which prevail among similar businesses and organizations of superior knowledge and skill engaged in providing similar services under the same or similar circumstances.

5. That Vendor has all necessary corporate power and has received all necessary corporate approvals to execute and deliver this contract, and the individual executing the contract on behalf of the Vendor has been duly authorized to act for and bind the company.

6. That no pyrotechnics will be utilized in Vendor’s facility during the period of time that the facility is leased by the University, unless specifically approved in writing by the President of the University.

II. Compliance with Law

Vendor warrants that all laws, rules and regulations of duly constituted authorities having jurisdiction over its activities shall be complied with by the Vendor and its employees.

III. Limitation of Liabilities

Except for the obligation of the University to pay Vendor pursuant to the terms of this contract, the University shall have no liability to the Vendor or to anyone claiming through or under the Vendor by reason of the execution or performance of this contract.

IV. Indemnification

To the fullest extent permitted by law, Vendor shall and does hereby agree to indemnify, protect, defend with counsel approved by University, and hold harmless University and its respective regents, officers, directors, attorneys, employees, representatives and agents (collectively “Indemnitees”) from and against all damages, losses, liens, causes of action, suits, judgments, expenses (including reasonable attorney’s fees), and other claims of any natures, kind, or descriptions (collectively “claims”) by any person or entity, arising out of, caused by, or resulting from the Vendor’s performance under this agreement and which are caused in whole or in part by any negligent act, negligent omission or willful misconduct of the Vendor, anyone directly or indirectly employed by the Vendor, or anyone for whose acts the Vendor may be liable. The provisions of this section shall not be construed to eliminate or reduce any other indemnification or right which any Indemnitee has by law. The indemnities contained herein shall survive the termination of this contract for any reason whatsoever.

V. Independent Contractor

Vendor recognizes that it is engaged as an independent contractor and covenants and agrees that it shall conduct itself consistent with such status, that it will neither hold itself out as nor claim to be an officer, partner, employee or agent of the University by reason hereof, and that it will not by reason hereof make any claim, demand or application to or for any right or privilege applicable to an officer, partner, employee or agent of the University.

VI. Insurance

University is insured for general liability insurance under a statewide program managed by the State Office of Risk Management. Such insurance will satisfy any University insurance obligations in the Agreement. For the entire term of the Agreement (“Term”), Vendor shall maintain Comprehensive General Liability insurance coverage of $1,000,000 per occurrence. All policies must contain a waiver of subrogation against University. Comprehensive General Liability must name University as Additional Insured and must include an endorsement to the policy that expressly extends coverage to University as an Additional Insured. All policies required to be maintained by Contracting Party under this Agreement shall be primary and noncontributory to any other insurance, self-insurance, or risk pooling arrangement maintained by University. Vendor shall pay all insurance deductibles and deductibles must not exceed $10,000 unless approved in advance by University. Vendor shall provide University Certificates of Insurance evidencing these insurance requirements prior to the date of performance. In accordance with Texas state law, University shall not name any individual or entity as Additional Insured on a University insurance policy.

VII. General Provisions

1. Assignment. This Agreement is a personal service contract for the services of Vendor, and Vendor’s interest in this contract, duties hereunder and fees due hereunder may not be subcontracted, assigned or delegated to any party without the prior written approval of the University and any attempt to do so shall be void and of no effect.
2. Force Majeure.Neither party hereto shall be liable or responsible to the other for any loss or damage or for any delays or failure to perform due to causes beyond its reasonable control including, but limited to, acts of God, strikes, epidemics, war, riots, flood, fire, sabotage, or any other circumstances of like character.
3. Payment Terms. Payment terms for amounts due from University to Contracting Party under the Agreement (including due dates, late fees, and interest) are governed by Chapter 2251 of the Texas Government Code.
4. Representations and Warranties by Contracting Party. If Contracting Party is a corporation or a limited liability company, Contracting Party warrants, represents, covenants, and agrees 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 and in good standing 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 Agreement, and the individual executing the Agreement on behalf of Contracting Party has been duly authorized to act for and bind Contracting Party.
5. Tax Certification. If Contracting Party is a taxable entity as defined by Chapter 171, *Texas Tax Code* (“Chapter 171”), then Contracting Party certifies that it is not currently delinquent in the payment of any taxes due under Chapter 171, or that Contracting Party is exempt from the payment of those taxes, or that Contracting Party is an out-of-state taxable entity that is not subject to those taxes, whichever is applicable.
6. Eligibility to Receive Payment. In accordance with Section 231.006 of the Texas Family Code and Sections 2155.004 and 2155.006 of the Texas Government Code, Contracting Party certifies that it is not ineligible to receive this Agreement or any payments under this Agreement and acknowledges that University may terminate this Agreement and/or withhold payment and/or reimbursement if this certification is inaccurate.
7. Payment of Debt or Delinquency to the State. Pursuant to Sections 2107.008 and 2252.903, *Texas Government Code*, Contracting Party agrees that any payments owing to Contracting Party under the Agreement may be applied directly toward any debt or delinquency that Contracting Party 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.
8. Conflict of Interest. Contracting Party and each person signing on behalf of Contracting Party certifies, and in the case of a 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 University’s Board of Regents, nor any employee or person, whose salary is payable in whole or in part by University, has direct or indirect financial interest in the award of the Agreement, or in the services to which the Agreements relates, or in any of the profits, real or potential, thereof.
9. Tax Exemption. University is exempt from the payment of taxes and will provide necessary documentation confirming its tax-exempt status.
10. Other Agreements. This contract supersedes all prior agreements, written or oral, between the Vendor and the University and shall constitute the entire agreement and understanding between the parties with respect to the subject matter hereof. That this contract and each of its provisions shall be binding upon the parties and may not be waived, modified, amended or altered except by a writing signed by the University and the Vendor.
11. Termination for Convenience. University may terminate this Agreement in writing at any time upon providing at least thirty (30) days written notice to Contracting Party. University will only be liable for payment for Services received prior to the effective date of such termination.
12. Loss of Funding. Performance by University under the Agreement may be dependent upon the appropriation and allotment of funds by the Texas State Legislature (the "Legislature") and/or allocation of funds by the Board of Regents of University (the "Board"). If the Legislature fails to appropriate or allot the necessary funds, or the Board fails to allocate the necessary funds, then University will issue written notice to Contracting Party and University may terminate the Agreement without further duty or obligation hereunder. Contracting Party acknowledges that appropriation, allotment, and allocation of funds are beyond the control of University.
13. State Auditor’s Office. Contracting Party understands that acceptance of funds under the 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 Sections 51.9335(c), *Texas Education Code*. Contracting Party agrees to cooperate with the Auditor in the conduct of the audit or investigation, including without limitation providing all records requested. Contracting Party will include this provision in all contracts with permitted subcontractors.
14. Limitations. The Parties are aware that there are constitutional and statutory limitations on the authority of University (a state agency) to enter into certain terms and conditions of the Agreement, including, but not limited to, those terms and conditions relating to liens on University’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”), and terms and conditions related to the Limitations will not be binding on University except to the extent authorized by the laws and Constitution of the State of Texas.
15. Sovereign Immunity. The Parties stipulate and agree that no provision of, or any part of the Agreement between University and Contracting Party, or any subsequent change order, amendment, or other Agreement modification shall be construed: (1) as a waiver of the doctrine of sovereign immunity or immunity from suit as provided for in the Texas Constitution and the Laws of the State of Texas; (2) to extend liability to University beyond such liability provided for in the Texas Constitution and the Laws of the State of Texas; or (3) as a waiver of any immunity provided by the 11th Amendment or any other provision of the United States Constitution or any immunity recognized by the Courts and the laws of the United States.
16. Access to Public Information. Contracting Party is required to make any information created or exchanged with University pursuant to the Agreement, and not otherwise excepted from disclosure under the Texas Public Information Act, available in PDF or other format that is accessible by the public at no additional charge to University. Contracting Party acknowledges that University 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*.
17. Confidentiality. During the course of the work and/or services to be provided under this agreement, Contracting Party may come in contact with confidential information of University. Contracting Party agrees to treat as confidential the information or knowledge that becomes known to Contracting Party during performance of this agreement and not to use, copy, or disclose such information to any third party unless authorized in writing by University. This provision does not restrict the disclosure of any information that is required to be disclosed under applicable law. Contracting Party shall promptly notify University of any misuse or unauthorized disclosure of its confidential information and upon expiration of this agreement shall return to University all confidential information in Contracting Party’s possession or control. Contracting Party shall further comply with all University information security policies that may apply.
18. Title IX. University strictly adheres to Title IX of the Education Amendments of 1972, the federal Campus Sexual Violence Elimination Act; United States Department of Education regulations and directives; and the University’s sexual harassment policy and procedures (“Regulations”).  Specifically, the Regulations apply to all students, employees, visitors, and other third parties on University-controlled property, including institutions and entities with whom University places its students.  Further, such Regulations prohibit unequal treatment on the basis of sex as well as sexual harassment and sexual misconduct. As a condition of employment, enrollment, doing business, or being permitted on the campus, the above-mentioned individuals, organizations, and entities must agree to:  1) Report immediately to the Title IX coordinator any and all claims of sex discrimination or sexual misconduct; 2) Cooperate with University’s Title IX investigation; and, 3) Cooperate fully with all sanctions that University may impose against such individual, organization, or entity, who is found to have violated the Regulations.  If the individual, organization, or entity fails to adhere to any of the aforementioned requirements, University reserves the right to take appropriate action, including but not necessarily limited to, immediate removal from campus; discipline of employees and students (including termination of employment and/or expulsion from school); and termination of business or contractual relationships.
19. Publicity. Contracting Party shall not use the University’s name, logo, or other likeness in any press release, marketing materials, or other public announcement without receiving University’s prior written approval.
20. Compliance. Contracting Party shall observe and abide by all applicable local, state, and federal laws, regulations, and University policies and procedures.
21. U.S. Department of Homeland Security’s E-Verify System. By entering into the Agreement, Contracting Party certifies and ensures that it utilizes and will continue to utilize, for the term of the Agreement, the U.S. Department of Homeland Security’s E-Verify system to determine the eligibility of: (i) all persons employed to perform duties within Texas, during the term of the Agreement; and (ii) all persons (including subcontractors) assigned by Contracting Party to perform work pursuant to the Agreement, within the United States of America. Contracting Party shall provide, upon request of University, an electronic or hardcopy screenshot of the confirmation or tentative non-confirmation screen containing the E-Verify case verification number for attachment to the Form I-9 for the three most recent hires that match the criteria above, by Contracting Party, and Contracting Party’s subcontractors, as proof that this provision is being followed. If this certification is falsely made, the Agreement may be terminated, at the discretion of the University and at no fault to the University, with no prior notification. Contracting Party shall also be responsible for the costs of any re-solicitation that the University must undertake to replace the terminated Agreement.
22. Israel Non-Boycott Verification. If the Agreement has a value of $100,000 or more that is to be paid wholly or partly from public funds of University, and if Contracting Party is a company, other than a sole proprietorship, with ten (10) or more full-time employees, then pursuant to *Texas Government Code* Chapter 2271, Contracting Party affirmatively states that is does not boycott Israel and will not boycott Israel during the term of the Agreement, as that term is defined by Section 808.001 (1), *Texas Government Code*.
23. Dispute Resolution; Governing Law. This Agreement and the applicable statute of limitations for any disputes under this agreement shall be brought in a court of competent jurisdiction in Nacogdoches or Angelina County, Texas and governed by Texas law. To the extent that Chapter 2260, *Texas Government Code*, is applicable to this Contract and is not preempted by other applicable law, the dispute resolution process provided for in Chapter 2260 and the related rules adopted by the Texas Attorney General pursuant to Chapter 2260, shall be used by University and Contracting Party to attempt to resolve any claim for breach of contract made by Contracting Party that cannot be resolved in the ordinary course of business. The Vice President for Finance & Administration of University shall examine Contracting Party’s claim and any counterclaim and negotiate with Contracting Party in an effort to resolve such claims. The parties hereto specifically agree that (i) neither the occurrence of an event giving rise to a breach of contract claim nor the pendency of a claim constitute grounds for the suspension of performance by Contracting Party, (ii) neither the issuance of this Contract by University nor any other conduct, action or inaction of any representative of University relating to this contract constitutes or is intended to constitute a waiver of University’s or the state’s sovereign immunity to suit; and (iii) University has not waived its right to seek redress in the courts.
24. Contracts with Foreign Terrorist Organizations Prohibited. Pursuant to Section 2252.152, *Texas Government Code*, and to the extent applicable, Contracting Party hereby represents, verifies, and warrants that it does not do business with Iran, Sudan, or any foreign terrorist organization identified on a list prepared and maintained under Section 806.051, 807.051, or 2252.153, *Texas Government Code*.
25. Trafficking of Persons. Under Section 2155.0061, *Texas Government Code*, Contracting Party certifies that the individual or business entity named in the bid or Agreement is not ineligible to receive the specified Agreement and acknowledges that the Agreement may be terminated and payment withheld if this certification is inaccurate.
26. Force Majeure. Neither party hereto will be liable or responsible to the other for any loss or damage or for any delays or failure to perform arising out of or caused, directly or indirectly, by circumstances beyond its reasonable control including acts of God, strikes, epidemics, war, riots, flood, fire, sabotage, governmental authority, or any other circumstances (“Force Majeure Occurrence”). Provided, however, in the event of a Force Majeure Occurrence, Contracting Party agrees to use their best efforts to mitigate the impact of the occurrence so that University may continue to provide mission critical services during the Force Majeure Occurrence.

APPROVED:

Stephen F. Austin State University

Vendor Name

Signature Signature

Printed Name Name

Title Title

Date Date