

**USE AGREEMENT**

by and between

**THE BOARD OF REGENTS OF**

**THE TEXAS A&M UNIVERSITY SYSTEM**

and

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

This Use Agreement (“Agreement”) is entered into by and between **THE BOARD OF REGENTS OF THE TEXAS A&M UNIVERSITY SYSTEM** (“**A&M SYSTEM**”), an agency of the State of Texas,and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, a/an \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (“**TENANT**”). This Agreement will be managed and administered on behalf of **A&M SYSTEM** by Texas A&M University-Corpus Christi (“**TAMU-CC**”).

**RECITALS**

**WHEREAS**, in order to enhance business opportunities in the Nueces County, Texas region, and to aid persons and companies in the business start-up process, **TAMU-CC**, by and through the Coastal Bend Business Innovation Center (“Innovation Center”), provides business clients with a unique environment in which businesses can use office and/or production space with shared services and receive business development assistance in exchange for a program fee;

**WHEREAS**, in order to support the Innovation Center’s goals, **TAMU-CC** offers Innovation Center clients office space within the Flour Bluff Building (the “Building”) located at 10201 South Padre Island Drive, Corpus Christi, Nueces County, Texas;

**WHEREAS,** **TENANT** is interested in occupying space in the Building;

**NOW, THEREFORE**,in consideration of the premises, mutual covenants, conditions and agreements contained herein, **A&M SYSTEM** and **TENANT** agree to the terms, conditions, obligations, covenants, duties and rights set forth herein.

**ARTICLE 1**

**PREMISES**

1.1 Exclusive Use. **A&M SYSTEM**, in consideration of the Program Fee (as hereinafter defined) and the mutual covenants and obligations of this Agreement, hereby agrees to provide **TENANT** with the exclusive use of the following described space:

Suite(s) \_\_\_\_\_\_\_\_\_\_ (the “Premises”) in the Building located at 10201 South Padre Island Drive, Corpus Christi, Nueces County, Texas, as further depicted on the floor plan attached hereto as Exhibit “A”.

1.2 “AS-IS” Condition/Relocation. **TENANT** accepts the Premises in its "AS-IS" condition. The space listed above has initially been allocated for **TENANT’s** use. **A&M SYSTEM** may, however, at its sole discretion, and with 30 days’ notice to **TENANT**, relocate **TENANT** to a different suite from time to time. Upon notification by **A&M SYSTEM** of such relocation, **TENANT** will be required to promptly move all of its belongings to its newly assigned space and surrender its old space to **A&M SYSTEM** in accordance with the terms of this Agreement. If **TENANT** fails to relocate to its newly assigned space within 30 days after notification from **A&M SYSTEM**, then **A&M SYSTEM** may terminate this Agreement on written notice to **TENANT**. If this Agreement is not terminated, **A&M SYSTEM** may move **TENANT’s** belongings to the new space at **TENANT’s** sole expense, in which case, **TENANT** must reimburse **A&M SYSTEM** within 10 days following **TENANT’s** receipt of written invoice.

1.3Common Areas. **TENANT** will have non-exclusive use of the “common areas” in the Building open to use by the general public, including but not limited to:

A. Public Restroom Facilities;

B. Public Water Fountains;

C. Kitchen Facility;

D. Vending Machines;

E. Conference Room (requires reservations);

F. Training Room (requires reservations); and

G. Entryway, lobby area, hallways, elevators, stairwells, or other areas open to use by the general public.

1.4Vehicle Parking. **TENANT** will have the non-exclusive right to use the parking lot adjacent to the Building, or any area designated in writing by **A&M SYSTEM**. **TENANT** has 10 days from the Commencement Date of this Agreement to secure a parking pass(s) from Innovation Center Staff for all vehicles. No storage (longer than 24 hours) of vehicles, trucks, trailers, boats or similar items is allowed in the parking lot at any time without **A&M SYSTEM’s** prior consent.

1.5Utilities. **A&M SYSTEM** will be responsible for and pay for all fees, costs, and expenses (including monthly usage charges) associated with the provision of the following utilities through existing systems:

1. Electricity;
2. Water;
3. Sanitary Sewer; and
4. Solid Waste Disposal.

Usual and customary use/consumption of electricity and natural gas, if applicable, is included in the Program Fee. **TENANT** will be responsible for charges related to excessive use and/or consumption of utilities as determined by **A&M SYSTEM**. **A&M SYSTEM** will provide air conditioning and heating sufficient to maintain any office spaces within the Premises at a temperature necessary for proper comfort of the occupants under normal office suite conditions.

1.6Permitted Use. Without the prior written consent of **A&M SYSTEM**, **TENANT** must use the Premises for the following purposes only: general office purposes using standard office equipment only.

1.7Taxes. **TENANT** is solely responsible for all taxes, assessments, and charges of a like nature, if any, which at any time during the term of this Agreement may be levied against **TENANT** or become a lien by virtue of any levy, assessment, or charge against **TENANT** by the federal government, the State of Texas, or any other tax or assessment levying bodies, in whole or in part, upon or in respect to the Premises, or in respect to or upon any personal property belonging to **TENANT** and used in connection with the Premises. Payment of such taxes, assessments, and charges, when and if levied or assessed, will be made by **TENANT** directly to the taxing or assessing authority charged with collection of such taxes, assessments and charges with written proof of such payment provided to **A&M SYSTEM** within five business days of payment. Failure to pay or report is an event of default.

1.8 Janitorial Services. **A&M SYSTEM** will be responsible for routine janitorial services for the Premises as currently provided to the common area space, at **A&M SYSTEM’s** sole cost.

1.9 Extermination Services. **A&M SYSTEM** will provide extermination services to the Premises at intervals determined by **A&M SYSTEM**. If **TENANT** desires additional services, **A&M SYSTEM** will provide the services upon **TENANT’s** request at **TENANT’s** sole cost.

1.10 Telephone and Internet Service. **TENANT** must arrange and pay directly for its own telephone service in the Premises. The Premises is currently equipped with internet lines for use by **TENANT**. **TENANT** will be responsible for the fees associated with activation and use of the internet services.

1.11 Signage. No sign, advertisement, or notices may be inscribed, painted, or affixed on any part of the inside or outside of the Building unless the location, color, size, and style are approved in writing and in advance by **A&M SYSTEM**, but there will be no obligation or duty on **A&M SYSTEM** to allow any sign, advertisement, or notice to be inscribed, painted, or affixed on any part of the inside or outside of the Building. A directory in a conspicuous place with the name of **TENANT** will be provided by **A&M SYSTEM**. Any necessary revision to the directory will be made by **A&M SYSTEM** within a reasonable time after written notice from **TENANT** of the error or change making the revisions necessary. No showcase or any other fixture or object whatsoever will be placed in front of the Building or in the corridor or parking area of the Building without prior written consent of **A&M SYSTEM**.

1.12 Alterations. **TENANT** accepts the Premises in the condition existing as of the date of this Agreement, and is not authorized to alter, change, or in any manner build-out the Premises, without prior written authorization from **A&M SYSTEM**. If **TENANT** makes a request to alter, change or build-out the Premises, **A&M SYSTEM** reserves the right to require architect and/or engineer drawings and plans prior to issuing a decision.

1.13 Maintenance. **A&M SYSTEM** agrees to maintain, at its expense, the facility roof, foundation, exterior walls (including all windows and doors), and common areas in good repair and condition, during the continuance of this Agreement. **A&M SYSTEM** will maintain and repair the Premises, and repair any damage arising from the act or negligence of **TENANT**, its employees, agents or invitees, at **TENANT’s** expense. **A&M SYSTEM** will invoice **TENANT** for such maintenance and repairs. If **TENANT** fails to pay such invoice within 10 calendar days of receipt, **TENANT** will be deemed to be in default. **TENANT** must give **A&M SYSTEM** written notice sent pursuant to Section 9.1 of any condition requiring, or for which it requests, repair.

1.14Access.For emergency and security purposes, and for maintaining the Premises, **A&M SYSTEM** reserves the right, at reasonable times, to enter and inspect the Premises and to make any necessary repairs or adjustments. **A&M SYSTEM** may also enter the Premises to ensure **TENANT** is complying with the terms of this Agreement and in order to show the space to prospective clients.

1.15 Security. **TENANT** will be supplied with a means of access to the Premises (i.e. secure key and/or access card or number). **A&M SYSTEM** reserves the sole right to exclude and/or eject any person(s) from the Building, including any of **TENANT’s** employees, agents, representatives, invitees, and/or customers. **TENANT** is solely responsible for the secure key and/or access card or number provided by **A&M SYSTEM** and other than **TENANT’s** employees, agents, representatives, invitees, and/or customers, **TENANT** will not allow access to the Premises by third parties without prior written consent of **A&M SYSTEM**.

**ARTICLE 2**

**TERM**

* 1. Initial Term. The initial term of this Agreement is for one year commencing on \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_\_\_\_\_\_ (the “Commencement Date”) and expiring on \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_\_\_\_\_\_, unless terminated sooner pursuant to this Agreement.
	2. Early Termination. This Agreement may be terminated by **A&M SYSTEM** or **TENANT** at any time upon 30 days’ prior written notice.
	3. Quiet Enjoyment. **A&M SYSTEM** covenants that **TENANT** has the right to peaceably have, hold, occupy, use and enjoy the Premises during the term of the Agreement and may exercise all of the applicable rights associated with such possession.

**ARTICLE 3**

**PROGRAM FEE**

3.1Program Fee. On or before the Commencement Date, and no later than the 5th day of each month thereafter, **TENANT** must pay **A&M SYSTEM** a program fee in the amount of $\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ per month (the “Program Fee”). The Program Fee will be prorated for any partial month.

At any time during the term of this Agreement, the Innovation Center’s Director, in his discretion, may require **TENANT** to pay a damage deposit (“Deposit”) of twice the amount of the monthly Program Fee, and may use the Deposit to offset any fees and costs incurred by **TENANT** under the terms of this Agreement.

Program Fees and any other payments hereunder must be made to:

Texas A&M University-Corpus Christi

6300 Ocean Drive

Corpus Christi, Texas 78412

ATTN: Accounts Receivable

3.2 Failure to Pay Program Fee. If **TENANT** fails to pay the Program Fee by the 5th day of the month, and **TENANT** fails to cure the default within 15 days following the date of written notice of such default from **A&M SYSTEM**, then this Agreement will terminate unless **A&M SYSTEM** and **TENANT** have reached a separate written agreement.

3.3 Abandonment. If **TENANT** removes a significant part of **TENANT’s** personal property from the Premises, whether or not **TENANT** provides notice of intent to abandon the Premises, this Agreement is presumed to be terminated as of the date of discovery by **A&M SYSTEM** of **TENANT’s** removal (“Abandonment Date”). **A&M SYSTEM**  may retain any prepaid portion of the Program Fees equal to the amount owed by **TENANT** for one month’s occupancy in addition to other fees and costs incurred by **TENANT** under the terms of this Agreement, and may re-let the Premises at any time after the Abandonment Date.

**ARTICLE 4**

**CONDEMNATION AND CASUALTY**

4.1Condemnation. If a condemnation proceeding results in a total or partial taking of the Building, this Agreement will terminate effective on the date of taking. Any prepaid Program Fee will be refunded to **TENANT**, and **A&M SYSTEM** will receive the monetary award from the condemning authority.

4.2Casualty. **A&M SYSTEM** will use all due diligence in repairing the damage, and the designated Program Fee amount will be equitably adjusted.

If damage results in destruction of the Building or Premises to such an extent that substantially all of the Building or Premises are not available for **TENANT’s** use or if **A&M SYSTEM** does not commence repairs under the above paragraph, any prepaid Program Fees will be refunded to **TENANT** on a pro-rata basis and this Agreement will be terminated. Alternatively, if **A&M SYSTEM** is able to provide other space in the Building suitable for **TENANT’s** use and such alternative space meets **TENANT’s** business needs, then **A&M SYSTEM** may relocate **TENANT** to the other spaceunder the same terms, conditions, and Program Fee amount as this Agreement.

**ARTICLE 5**

**COVENANTS AND OBLIGATIONS OF TENANT**

5.1 Personal Property.

1. Ownership: All of **TENANT’s** personal property located in the Premises will be under the sole control and ownership of **TENANT**, subject to **A&M SYSTEM’s** lien rights available under law and equity.
2. Removal and Cleaning: Upon termination of this Agreement for any reason, **TENANT** must remove all of its personal property located in and on the Premises on or before the termination date, and must leave the Premises clean and in a condition equal to or better than the condition which existed at the commencement of this Agreement, normal wear and tear excepted. **TENANT** must not remove any fixtures or improvements which it constructed on the Premises, except for the rights of removal as may be expressly granted in this Agreement, or as may be granted in writing by **A&M SYSTEM**.  Any excessive cleaning charges incurred by **A&M SYSTEM** or expenses related to damages to the Premises or the Building caused by **TENANT’s** removal of equipment, furnishings, fixtures, apparatus and personal property must be reimbursed by **TENANT** within 10 days of written notice from **A&M SYSTEM** to **TENANT**.  If **TENANT** refuses or fails to remove all of its personal property, **A&M SYSTEM**,at its sole option, can elect the following:
	* 1. **A&M SYSTEM** can retain some or all of the personal property, and **A&M SYSTEM** will have all rights, title, ownership and possession to and of the personal property, including the ability to sell, assign and/or use the personal property; or
		2. **A&M SYSTEM** can remove and dispose of some or all of the personal property and invoice **TENANT** for the cost of the removal and disposal.
3. Lien: In the event of termination of this Agreement, **A&M SYSTEM** expressly retains a statutory lien and a contractual lien against the personal property located in and on the Premises; and retains the right to enter the Premises to take possession of such personal property, without any recourse by **TENANT**, and without being liable for any damage to the personal property.
4. Keys and Access Cards: Upon termination of this Agreement for any reason, **TENANT** will vacate the Premises and return all keys and/or access cards to the Premises and/or Building to **A&M SYSTEM**. **TENANT** will be responsible for any costs incurred by **A&M SYSTEM** as a result of **TENANT’s** failure to return keys and/or access cards.

5.2 Liability. If the Premises or the Building is damaged as the result of the willful misconduct or negligence of **TENANT** its agents, employees, licensees, guests or invitees, **TENANT** will pay **A&M SYSTEM** the entire loss upon written demand.

5.3 Insurance. **TENANT** will maintain commercial general liability insurance with a combined single limit in an amount acceptable to **A&M SYSTEM**, but not less than $1,000,000 per occurrence, naming **A&M SYSTEM** and **TAMU-CC** as additional insureds.

**TENANT** will provide **A&M SYSTEM** with a copy of such insurance policy/policies prior to the Commencement Date and must deliver to **A&M SYSTEM** a certificate evidencing renewal of the policy/policies 10 days of such renewal date. All such policies must be written by insurance companies authorized to do business in Texas and must provide that **A&M SYSTEM** be provided with 10 days prior written notice of cancellation, reduction, or material change by the insurer. No insurance carrier will have a right of subrogation against **A&M SYSTEM**.

If **TENANT** fails or refuses to maintain such insurance coverage, **A&M SYSTEM** will notify **TENANT** in writing, and **TENANT** will have 10 calendar days to acquire the required policy/policies. If **TENANT** fails or refuses to acquire the required policy/policies, **TENANT** will be in default of this Agreement.

5.4 Indemnity. **TENANT** agrees to indemnify, defend, and hold harmless **A&M SYSTEM** and **TAMU-CC**, and their officers, employees and agents from and against any and all suits, actions, legal or administrative proceedings, demands, claims, liabilities, fees, fines, penalties, losses, damages, expenses or costs that are incurred or imposed based upon a violation of any applicable laws, or for injury to person(s) or damage to property arising out of, or in any way connected to the Premises and the Building caused by **TENANT**, its officers, employees, agents and invitees.

5.5 Liens. **TENANT** will not cause or allow the attachment of a construction, mechanic and/or materialman’s lien, or any other type of lien to the Premises or Building. If such a lien is filed against the Premises or Building, within 30 days of receipt of written notice of the lien, **TENANT** must obtain a recordable release, whether obtained through payment or legal proceedings. If **TENANT** fails or refuses to obtain a recordable release, **TENANT** will be deemed to be in default.

5.6 Legal Compliance. **TENANT** will comply with all policies, procedures, rulesand regulations of **A&M SYSTEM** and **TAMU-CC** and any federal, state, local and agency laws, statutes, ordinances, regulations, rules and procedures applicable to the Premises and **TENANT’s** use of the Premises.

5.7 Health, Safety and Compliance.

1. Environmental, Health & Safety Compliance.

**TENANT** agrees that **TENANT** will not receive, accept, store, dispose or release any Hazardous Substances on, under, in or around the Premises or the Building, transport any Hazardous Substances to or from the Premises or the Building or permit the existence of any contamination by Hazardous Substances on, under, in or around the Premises or the Building without the prior written consent of **TAMU-CC**.  If such consent is given, **TENANT** assumes full responsibility for any non-compliance or liability pertaining to such Hazardous Substances. “Hazardous Substances” will have the meanings specified in Section 3001 of the Resource Conservation and Recovery Act and any other applicable law, rule or regulation (collectively “Applicable Laws”).

**TENANT** will not possess or use biohazardous materials, genetically modified organisms, as described in the *NIH Guidelines for Research Involving Recombinant DNA Molecule* (“NIH Guidelines”) or select agents that are listed in 42 CFR Part 73, 7 CFR Part 331 and 9 CFR Part on, under, in or around the Premises or the Building without the prior written consent of **TAMU-CC**. If such use is allowed, **TENANT** assumes full responsibility for any non-compliance or liability pertaining to such possession or use.

The Premises must not be used for activities requiring select agent registration with the Centers for Disease Control or the United States Department of Agriculture. If **TENANT** acquires knowledge of the presence of any Hazardous Substances, biohazardous materials, genetically modified organisms or select agents in violation of any Applicable Laws or contamination on, under, in or around the Premises or the Building or of the transportation of any Hazardous Substances, biohazardous materials, genetically modified organisms or select agents to or from the Building, **TENANT** must give written notice to **TAMU-CC** immediately with a full description thereof.

**TENANT** assumes full responsibility for the research activities conducted upon the Premises, including without limitation, responsibility for compliance with legal requirements relating to human participants and animal subjects.  **TENANT** assumes full responsibility for any noncompliance or liability pertaining to all research activities conducted upon the Premises. Animals are not permitted upon the Premises or in the Building without the prior written consent of **TAMU-CC**.

**TENANT** must not use or bring to the Building or Premises any radioactive materials, radiation producing devices, or lasers (not including laser printers or laser pointers).

B.     Environmental Waiver and Release:  **TENANT** hereby waives, releases and forever discharges **TAMU-CC** and **A&M SYSTEM**, and their officers, employees and agents from all present and future claims arising out of or in any way related to or connected with any condition of environmental contamination in, on or at the Premises or the Building or the existence of any Hazardous Substances or contamination in any state in, on or at the Premises or Building, however they came to be placed therein or thereon, except to the extent caused by the negligence or willful misconduct of **TAMU-CC** or **A&M SYSTEM**.

**ARTICLE 6**

**DEFAULT BY TENANT**

6.1 Default. Except as provided in Section 3.2 with respect to the failure to timely pay the Program Fee or as otherwise provided in this Agreement, if **TENANT** fails to perform, keep or observe any of the terms, covenants, or conditionsrequired of **TENANT** by this Agreement and **TENANT** fails to cure the default within 20 days following the date of written notice of such default from **A&M SYSTEM**, then this Agreement will terminate unless **A&M SYSTEM** and **TENANT** have reached a separate written agreement. If the default is incurable, as determined by **A&M SYSTEM** in its sole discretion, **A&M SYSTEM** may immediately terminate this Agreement by written notice to **TENANT**.

6.2Right to Cure. In the event **A&M SYSTEM** determines that **TENANT’s** default creates an emergency situation, **A&M SYSTEM** may correct any or all of the defaults, and include the costs of such corrections in the next month’s Program Fee; provided, that **A&M SYSTEM** gives written notice to **TENANT** of the corrections undertaken and the cost of such repairs, with supporting documentation (e.g., invoices).

**ARTICLE 7**

**DEFAULT BY A&M SYSTEM**

**TENANT** may terminate this Agreement as its sole remedy and terminate all or any of its obligations upon or after the occurrence of any one of the following events:

1. Breach or failure by **A&M SYSTEM** to perform, keep and observe any of the terms or conditions required of **A&M SYSTEM** by this Agreement, if such breach or failure is not cured within 30 calendar days after the receipt by **A&M SYSTEM** of written notice thereof. A copy of the written notice of such breach must also be delivered to:

The Texas A&M University System

Office of General Counsel

Attn: System Real Estate Office

301 Tarrow Street, 6th Floor

College Station, Texas 77840-7896

Phone: (979) 458-6350

Fax: (979) 458-6359

Email: sreo@tamus.edu

1. Inability of **TENANT** to use the Premises and/or the Building for more than 30 consecutive calendar days due to any Applicable Laws.

**ARTICLE 8**

**ASSIGNMENT OR SUBLET**

**TENANT** must not assign this Agreement nor sublet all or any portion of the Premises without the prior written consent of **A&M SYSTEM**. Any attempt to assign this Agreement or sublet the Premises by **TENANT** without **A&M SYSTEM’s** prior written consent will be a default hereunder.

**ARTICLE 9**

**MISCELLANEOUS PROVISIONS**

9.1 Notices. Any notice required or permitted under this Agreement must be in writing, and will 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, electronic mail with read receipt, or other commercially reasonable means and will be effective when actually received. **A&M SYSTEM** and **TENANT** can change their respective notice address by sending to the other party a notice of the new address. Notices should be addressed as follows:

**TENANT**: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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 Email: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 **A&M SYSTEM**:Texas A&M University – Corpus Christi

Attn: Contracts Administration

 Email: contracts@tamucc.edu

9.2 Governing Law. This Agreement is construed under and in accordance with the laws of the State of Texas, and is performable in Nueces County, Texas; however, by statute, mandatory venue for all legal proceedings against **A&M SYSTEM** is to be in the county in which the primary office of the chief executive officer is located. At execution of this Agreement, such county is Brazos County, Texas.

9.3 Debarment. **TENANT** represents and warrants, to the best of its knowledge and belief, that neither **TENANT** nor any of its Principals (“Principal” means an officer, director, owner, partner, or a person having primary management or supervisory responsibilities within a business entity) is presently debarred, suspended, proposed for debarment, voluntarily excluded, or involuntarily excluded from receiving a contract from any federal, state or local government or agency, nor has it been declared ineligible for the award of contracts by any federal, state, or local government or agency, nor does it appear on any federal, state or local government’s Excluded Parties List System.  **TENANT** must provide immediate written notice to **A&M SYSTEM** if, at any time **TENANT** learns that this representation was erroneous when submitted or has become erroneous by reason of changed circumstances.  The representations and warranties above are a material representation of fact upon which reliance was placed when entering into this Agreement. If it is later determined that **TENANT** knowingly made a false representation, in addition to other remedies available to **A&M SYSTEM**, **A&M SYSTEM** may terminate this Agreement.

9.4 Parties Relationship. Nothing in this Agreement creates or will be construed as creating a partnership, joint venture, or agency relationship between **A&M SYSTEM** and **TENANT** or between **TAMU-CC** and **TENANT**.

9.5 Time of the Essence. Time is of the essence in respect to the performance of each provision of this Agreement.

9.6Waivers. One or more waivers of any covenant, term or condition of this Agreement by either party will not be construed as a waiver of any subsequent breach of the same covenant, term or condition.

9.7 Cumulative Rights. All rights, options and remedies contained in this Agreement and held by **A&M SYSTEM** and **TENANT** are cumulative and the exercising of one will not exclude exercising another. **A&M SYSTEM** and **TENANT** each have the right to pursue any remedy or relief which may be provided by law, in equity or by the stipulations of the Agreement.

9.8 Counterparts. This Agreement may be executed in multiple counterparts, each of which is declared an original.

9.9 Severability. If any term, provision, covenant, condition, or clause of this Agreement is held by a court of competent jurisdiction to be invalid, illegal, void, or unenforceable under present or future laws effective during the term of the Agreement, it is the intention of **A&M SYSTEM** and **TENANT** that the remaining clauses or provisions of the Agreement will not be affected, impaired or invalidated and will remain in full force and effect.

9.10 Force Majeure. If either party fails to fulfill its obligations hereunder (other than an obligation for the payment of money), when such failure is due to an act of God, or other circumstance beyond its reasonable control, including but not limited to fire, flood, pandemic, epidemic, quarantine, national or regional emergencies, governmental order or action, civil commotion, riot, war (declared and undeclared), revolution, acts of foreign or domestic terrorism, or embargos, whether or not foreseeable or preventable through the exercise of reasonable diligence, occurs, is implemented or becomes effective during the term of this Agreement and makes it unsafe (or gives rise to a health risk), impracticable, onerous, uneconomic, or burdensome for either party to proceed with or continue the performance of the Services or any part thereof, then said failure will be excused for the duration of such event and for such a time thereafter as is reasonable to enable the parties to resume performance under this Agreement, provided however, that in no event will such time extend for period of more than 30 days. For the avoidance of doubt, the COVID-19 pandemic and any governmental changes or closures related thereto will be deemed Force Majeure events, even to the extent reasonably foreseeable by either party as of the effective date of this Agreement.

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

9.12Debts or Delinquencies. Pursuant to Section 2252.903, Texas Government Code, **TENANT** agrees that any payments owing to **TENANT** under this Agreement may be applied directly toward certain debts or delinquencies that **TENANT** 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.

9.13 Availability of Funding. This Agreement may be contingent upon the continuation of state or federally funded programs, the appropriation of funds by the Texas Legislature and/or the availability of specific funds to cover the full term and cost of this Agreement. In the event a curtailment of state or federally funded programs occurs, state appropriations are curtailed or withdrawn, or in the event specific funds are unavailable to **A&M SYSTEM**, **A&M SYSTEM** may terminate this Agreement upon written notice to **TENANT**, or may assign this Agreement, or sublet the Premises, or any part of the Premises, to another agency of the State of Texas, without further duty or obligation hereunder. **TENANT** acknowledges that appropriation of funds is beyond the control of **A&M SYSTEM**.

9.14 Conflict of Interest. By executing this Agreement, **TENANT** and each person signing on behalf of **TENANT** certifies, and in the case of a sole proprietorship, partnership or corporation, each party thereto certifies as to its own organization, that to the best of their knowledge and belief, no member of **A&M SYSTEM** or **A&M SYSTEM’s** Board of Regents, nor any employee, or person, whose salary is payable in whole or in part by **A&M SYSTEM**, has direct or indirect financial interest in this Agreement, or in the services, if any, to which this Agreement relates, or in any of the profits, real or potential, related thereto.

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

9.16 Publicity: **TENANT** must not use **A&M SYSTEM’s** or **TAMU-CC’s** name, logo or other likeness in any press release, marketing materials or other public announcement without receiving **A&M SYSTEM’s** and **TAMU-CC’s** prior written approval.

9.17 Entire Agreement. This Agreement constitutes the complete agreement of **A&M SYSTEM** and **TENANT** and supersedes any prior agreement or understanding, written or oral, between them regarding the subject matter covered by this Agreement. No agreement will be effective to change, modify or terminate this Agreement in whole or in part unless such agreement is in writing and duly signed by the party against whom enforcement of such change, modification or termination is sought.

**EXECUTED** this \_\_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_\_\_\_\_.

**BOARD OF REGENTS OF THE TEXAS A&M UNIVERSITY SYSTEM**, an agency of the State of Texas, for the use and benefit of Texas A&M University-Corpus Christi

By:

Name:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Title:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Texas A&M University – Corpus Christi

**RECOMMENDED APPROVAL**:

By:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 Brian Tietje

 Dean, College of Business

Dated:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Texas A&M University-Corpus Christi

**[SIGNATURES CONTINUE ON NEXT PAGE]**

**EXECUTED** this \_\_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_\_\_\_\_.

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 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Exhibit “A”

**FLOOR PLAN**