

This agreement is made and entered into by and between Texas A&M University (“TAMU”), a member of The Texas A&M University System, an agency of the State of Texas, and [party], a Corporation [or Individual] having a principal place of business at (“Licensee”), collectively referred to herein as “Parties” and each individually as a “Party” hereto, who mutually agree to the terms and conditions of this License Agreement.

TAMU has adopted, owns, and is using throughout the world, in connection with a variety of goods and services, numerous registered and common law trademarks; and

Licensee desires to use one or more of TAMU’s trademarks in a mural at one of Licensee’s business locations; and

TAMU is willing to grant to Licensee, and Licensee is willing to accept, a license to use TAMU’s trademarks, upon the terms and conditions below.

The Parties agree as follows:

### **1. Definitions**

1.1 “Licensed Marks” means all of TAMU’s trademarks and service marks, whether existing under common law, or under state or federal law.

1.2 “Mural” means one painting or photograph affixed directly on an interior wall at Licensee’s place of business at [address]. Mural does not include reproductions or photographs of the affixed painting, including, without limitation, reproductions or photographs that include images of the affixed painting or photograph in any flyer, brochure, or other publication.

### **2. License Grant**

2.1 TAMU grants Licensee a nonexclusive, non-transferrable, non-sublicensable, royalty-free license to use the Licensed Marks in the Mural.

2.2 The rights granted to Licensee by TAMU and obtained by Licensee as a result of or in connection with this Agreement are limited use license rights only, and nothing in this Agreement assigns any or all of TAMU’s ownership rights in the Licensed Marks.

2.3 In consideration for the license granted to Licensee, Licensee shall pay TAMU \$5,000.00 on or before the Effective Date.

### **3. Use of the Licensed Mark**

3.1 Licensee shall obtain TAMU’s advance written approval of the proposed artwork for the Mural before installation. Licensee represents that the Mural will be a faithful rendition of the artwork approved by TAMU. Licensee must incorporate in an appropriate manner the “®” or “™” notice, as applicable, in each use of a Licensed Mark in the Mural. Licensee may not modify the Mural without the advance written approval of TAMU.

3.2 Licensee may not at any time:

(A) Use Mural for any commercial, promotional, advertising, or merchandising use, unless University has granted additional rights in writing;

(B) Use any colorable imitation of any Licensed Marks, or any variant form (including variant design forms, logos, colors, or type styles/fonts) of any Licensed Marks not specifically approved;

(C) Offer or provide goods or services under or in association with any Licensed Marks;

(D) Incorporate Licensed Marks or Mural into a logo, trademark, or service mark;

(E) Take any action that would bring Licensed Marks into public disrepute including use of Licensed Marks for any pornographic, defamatory, or otherwise unlawful use, whether directly or in context or juxtaposition with specific subject matter;

(F) Make any claim or indication that TAMU endorses its products or services or portray itself as an agent, servant, or employee of TAMU; or

(G) Take any action that would tend to destroy or diminish TAMU's goodwill in any Licensed Marks.

(H) The Mural may not depict or imply endorsement of:

- i. Partisan political activity;
- ii. Alcohol;
- iii. Illegal drugs;
- iv. Gambling products;
- v. Tobacco products;
- vi. Firearms or other weapons;
- vii. Racist, sexist, hateful, demeaning or degrading language or statements;
- viii. Profanity;
- ix. Sexual acts;
- x. Statements impugning other universities

3.3 Licensee may not at any time do or cause to be done any act or thing challenging, contesting, impairing, invalidating, or tending to impair or invalidate any of TAMU's rights in any of the Licensed Marks or any registrations derived from those rights.

3.4 TAMU has, retains, and may exercise, both during and after the term of this Agreement, all rights and remedies available to TAMU, whether derived from this Agreement, from statute, or otherwise, as a result of or in connection with Licensee's breach of this Agreement, misuse of any of the Licensed Marks, or any other use of any of the Licensed Marks by Licensee which is not expressly permitted by this Agreement.

3.5 TAMU may inspect the Mural for compliance with this Agreement during Licensee's normal business hours.

3.6 Licensed Marks may not be used in conjunction with the name or trademark(s) of any other entity without the prior written permission of that entity and of TAMU. If TAMU grants permission to use Licensed Marks together with those of another party's trademark in a particular design, the marks must be distinct and separate from each other, and TAMU's trademarks must not be overshadowed or diminished in any way in comparison to the other entity's trademark.

#### **4. Term and Termination**

4.1 The term of this Agreement is for five (5) years from the Effective Date, unless terminated earlier under this Article 4 or extended in writing by the Parties.

4.2 This Agreement and all rights granted under this Agreement will automatically terminate without notice from TAMU if Licensee:

(A) Breaches any term of this Agreement and fails to remedy the breach within 30 days of receiving written notice of the breach from TAMU;

(B) Attempts to assign, sublicense, transfer, or otherwise convey rights under this Agreement, without first obtaining TAMU’s written consent, any of the rights granted to Licensee under this Agreement;

(C) Uses the Licensed Marks in a manner in violation of, or otherwise inconsistent with, the restrictions imposed by or in connection with Article 3 of this Agreement; or

(D) Uses the Licensed Marks in a manner not expressly permitted by this Agreement.

4.3 All rights granted by this Agreement, including, without limitation, Licensee’s right to use the Licensed Marks, will expire upon termination of this Agreement, and upon termination Licensee must immediately cease and desist from all use of the Licensed Marks, including removal of all Licensed Marks from the Mural.

**5. Indemnification and Representation**

5.1 Licensee shall at all times during and after the term of this Agreement indemnify, defend, and hold harmless TAMU, The Texas A&M University System, its regents, officers, and employees against any claim, proceeding, demand, liability, or expense (including legal expense and reasonable attorneys’ fees) which relates to injury to persons or property, any action brought by a third party alleging infringement of intellectual property rights, or against any other claim, proceeding, demand, expense, or liability of any kind resulting from use by Licensee, its officers, employees, agents or representatives, of any of the Licensed Marks or arising from any obligation of Licensee under this Agreement.

5.2 TAMU represents that it owns and has title to the Licensed Marks and has the full right and power to grant the license in Article 2, and that there are no outstanding agreements, assignments, or encumbrances inconsistent with the provisions of this Agreement. TAMU makes no other representations and extends no other warranties of any kind, either express or implied, including but not limited to warranties of merchantability or fitness for a particular purpose, nor does TAMU assume any obligations regarding infringement of patent, copyright, or trademark rights or other rights of third parties due to Licensee’s activities under this Agreement.

**6. General Provisions**

6.1 **Relationship of the Parties.** Nothing contained in the Agreement shall be construed as creating any agency, partnership, or other form of joint enterprise between the Parties. The relationship between the Parties shall at all times be that of independent contractors. Neither Party shall have authority to contract for or bind the other in any manner whatsoever. The Agreement confers no rights upon either Party except those expressly granted herein.

6.2 **Notices.** Notices or other communications required by this Agreement will be sufficiently made or given if mailed by certified First Class United States mail, postage pre-paid, or by commercial carrier (e.g., FedEx, UPS, etc.) when the carrier maintains receipt or record of delivery, addressed to the address stated below, or to the last address specified in writing by the intended recipient.

If to TAMU: Shane Hinckley  
Assistant VP for Business Development  
205 Bizzell Hall East  
College Station, TX 77843-1137

If to Licensee: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

6.3 **Assignment.** This Agreement, with the rights and privileges it creates, is assignable only with the written consent of both Parties.

6.4 **Governing Law.** The Agreement shall be construed in accordance with, and all disputes hereunder, shall be governed by the laws of the State of Texas.

6.5 **Jurisdiction and Venue.** The Texas state courts of Brazos County, Texas (or, if there is exclusive federal jurisdiction, the United States District Court for the Southern District of Texas) shall have exclusive jurisdiction and venue over any dispute arising out of the Agreement, and Licensee hereby consents to the jurisdiction of such courts.

6.6 **Headings.** Headings are solely for convenience of reference and are not part of, and may not be used to construe, this Agreement.

6.7 **Severability.** If any provision of this Agreement is invalid, illegal, or unenforceable, the validity, legality and enforceability of the remaining provisions will not in any way be affected or impaired. A waiver of any breach of this Agreement does not waive any other breach of the same or other provision of this Agreement. A waiver is not effective unless made in writing.

6.8 **Privileges and Immunities.** TAMU is an agency of the State of Texas and nothing in this Agreement waives or relinquishes TAMU’s right to claim any exemptions, privileges, or immunities as may be provided by law.

6.9 **Entire Agreement.** This Agreement contains the entire understanding of the Parties as to the Licensed Marks, and supersedes all other written and oral agreements between the Parties as to the Licensed Marks. This Agreement may be modified only by a written amendment signed by the Parties.

6.10 **Counterparts.** The Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

The Effective Date of this Agreement is the date of last signature hereunder.

**Texas A&M University**

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

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

Shane Hinckley

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

Title: Asst. VP for Business Development

Date: \_\_\_\_\_

Date: \_\_\_\_\_

*OGC Approved 2-2011*