

Whelan Event Staffing Services, Inc.  
1699 S. Hanley Road  
St. Louis, MO 63144

## SERVICE AGREEMENT ("Agreement")

Texas A&M University, a member of The Texas A&M University System, an agency of the State of Texas, hereinafter referred to as "Client", and Whelan Event Staffing Services, Inc., hereinafter referred to as "Whelan", hereby mutually agree as follows:

1. PURPOSE: The purpose of this Agreement is to establish a continuing relationship that is cooperative in nature; to help provide Client with security and event services personnel.
2. APPOINTMENT: The Client hereby agrees to use Whelan's services at the following location(s):

**Location #1 ("Stadium Facility")**

Texas A&M University  
756 Houston Street  
College Station, TX 77843

**Location #2**

Other locations as requested by Client

3. DUTIES: Whelan will provide staffing for Client's security and event staffing needs, as determined by Client. Whelan will not be responsible for assessing or determining the security or event staffing needs of the Client, and Whelan's duties shall be limited to providing security and event services personnel as and when requested by the Client pursuant to Client's Athletics Crowd Management Services RFP Main 19- 0010, incorporated herein by reference, and the other terms of this Agreement.
4. SERVICE PERIOD: Service will commence on the 1st day of August 2019 and will continue through July 31, 2020 ("Initial Term"). Texas A&M reserves the right to renew the agreement for an additional four (4) years, one (1) year at a time providing all terms and conditions of the original agreement remain the same, subject to the permitted rate increases in Sections 5 and 6 below and the extension is mutually agreed upon by both parties.
5. COSTS: The Client agrees to pay Whelan for its services in accordance with the following rate structure for all hours worked by Whelan employees. The charges set forth in this Agreement can be changed upon the written consent of both the Client and Whelan.

| Pricing                                    | Regular | Holiday |
|--|---------|---------|
| Security Attendant, Hourly Rate            | \$18.43 | \$27.65 |
| Security Supervisor, Hourly Rate           | \$24.75 | \$37.13 |
| Ticket Taker/Scanner, Hourly Rate          | \$18.43 | \$27.65 |
| Ticket Taker/Scanner Supervisor, Hour Rate | \$24.75 | \$37.13 |
| Usher, Hourly Rate                         | \$18.43 | \$27.65 |
| Usher Supervisor, Hourly Rate              | \$24.75 | \$37.13 |
| Area Director, Hourly Rate                 | \$40.55 | \$60.83 |
| Event Manger, Hourly Rate                  | \$40.55 | \$60.83 |

#### Loyalty Rate Structure

| Years | Pay & Bill Rate               |
|-------|-------------------------------|
| 0-4   | Base Pay                      |
| 5-9   | 5 percent increase from base  |
| 10-19 | 10 percent increase from base |
| 20-29 | 15 percent increase from base |
| 30+   | 20 percent increase from base |

#### Maximum Annual Increase

| Date Range        | Maximum Annual Increase |
|-------------------|-------------------------|
| 07/01/20-06/30/21 | 3%                      |
| 07/01/21-06/30/22 | 3%                      |
| 07/01/22-06/30/23 | 3%                      |
| 07/01/23-06/30/24 | 3%                      |

All invoices will include any applicable taxes. One and one-half the normal rate will be charged for any overtime that is approved by the Client or additional services (including schedule changes) with less than twenty-four (24) hours prior written notice and any hours worked on the following major holidays: New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day and Christmas Day.

6. **TERMS:** All proper invoices presented to the Client for services will be due and payable pursuant to the terms set forth in the Texas Prompt Payment Act. Any dispute or claim regarding the amount of an invoice or the underlying services rendered must be received by Whelan in writing from the Client consistent with time frames set forth in the Texas Prompt Payment Act setting forth the nature of the dispute and including all supporting documentation.

Quotations are guaranteed subject to the sole exception of increases which will be requested as wages, wage related expenses and fringe benefits are increased as a result of or in response to (1) any increase in the applicable Federal, State and/or Municipal minimum wage requirement, (2) any increase in legally required employer contributions or payments including, but not limited to, increases in the employer's contribution for workmen's compensation, unemployment compensation, and social security, and (3) any increased costs related the Patient Protection and Affordable Care Act (healthcare reform) or any other statutory increase.

If client fails to pay within thirty (30) days of receipt of any properly submitted invoice, then Whelan may deliver to Client written notice of such failure ("Late Payment Notice"). All past due amounts will be subject to a finance charge in accordance with the Texas Prompt Payment Act, Chapter 2251, *Texas Government Code*.

Notwithstanding anything to the contrary, Whelan may terminate or suspend services at any time upon *seven* (7) days prior written notice to Client due to Client's failure to pay any monies due hereunder within *five* (5) days after Client's receipt of a Late Payment Notice. Further, to the extent permitted by the Constitution and laws of the State of Texas, Whelan will not be responsible for any losses incurred as a result of the suspension of services. Client will assume responsibility for any such losses.

7. SERVICE HOURS: The hours of service are as defined by the Client. Upon acceptance by Whelan of the schedule, these hours will then be deemed normal. Normal hours can be changed immediately upon written notice to Whelan. Any personnel transfer will be at the sole discretion of Client, subject to Whelan's sole and absolute right as employer-at-will to discharge or *remove* any of its employees.
8. INDEPENDENT CONTRACTOR: Whelan is an independent contractor and neither Whelan nor its officers, agents or employees are in law or in fact, employees of Client. Whelan assumes full responsibility for compliance with all applicable laws, taxes and withholdings, ordinances, and regulations related to Whelan's employees, including the provision of workers' compensation insurance.
9. FORCE MAJEURE: No party shall be liable to the other, its officers, directors, employees, agents, guests, invitees or any third party and, to the fullest extent permitted by law, and each party hereby releases the other, its stockholders, directors, officers, employees and agents for any property loss, economic loss or personal injury (including death) resulting from either party's delay in performing or failure to perform any service under this Agreement where such delay or failure is caused, in whole or in part, by any event beyond the reasonable control of any party, its employees and agents, including but not limited to any act of God, pandemic outbreak, flood, windstorm, governmental embargo, quarantine, strike or other work stoppage, riot, war or other military action, civil disorder, acts of terrorism, rebellion or revolution, hostile fire, sabotage or governmental seizure.
10. INSURANCE: Whelan shall obtain and maintain, for the duration of this Agreement, the minimum insurance coverage set forth below. With the exception of Professional Liability (E&O), all coverage shall be written on an occurrence basis. All coverage shall be underwritten by companies authorized to do business in the State of Texas or eligible surplus lines insurers operating in accordance with the Texas Insurance Code and have a financial strength rating of A- or better and a financial strength rating of VII or better as measured by A.M. Best Company or otherwise acceptable to Client. By requiring such minimum insurance, Client shall not be deemed or construed to have assessed the risk that may be applicable to Whelan under this Agreement. Whelan shall assess its own risks and if it deems appropriate and/or prudent, maintain higher limits and/or broader coverage. Whelan 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. No policy will be canceled without unconditional written notice to Client at least ten (10) days before the effective date of the cancellation.

**Coverage****Limit****A. Worker's Compensation**

Statutory Benefits (Coverage A)  
Employers Liability (Coverage B)

Statutory  
\$1,000,000 Each Accident  
\$1,000,000 Disease/Employee  
\$1,000,000 Disease/Policy Limit

Workers' Compensation policy must include under Item 3.A. on the information page of the workers' compensation policy the state in which work is to be performed for Client. Workers' compensation insurance is required, and no "alternative" forms of insurance will be permitted.

**B. Automobile Liability**

Business Auto Liability Insurance covering all owned, non-owned or hired automobiles, with limits of not less than \$1,000,000 Single Limit of liability per accident for Bodily Injury and Property Damage for which Whelan or its subcontractors are responsible arising out of their services;

**C. Commercial General Liability**

|                                 |             |
|---------------------------------|-------------|
| Each Occurrence Limit           | \$1,000,000 |
| General Aggregate Limit         | \$2,000,000 |
| Products / Completed Operations | \$1,000,000 |
| Personal / Advertising Injury   | \$1,000,000 |
| Damage to rented Premises       | \$300,000   |
| Medical Payments                | \$5,000     |

The required commercial general liability policy will be issued on a form that insures Whelan's or its subcontractors' liability for bodily injury (including death), property damage, personal and advertising injury assumed under the terms of this Agreement arising out of Whelan's or its subcontractors' services.

**Additional Endorsements**

The Auto and Commercial General Liability Policies shall name The Texas A&M University System Board of Regents for and on behalf of The Texas A&M University System and Texas A&M University as additional insured's.

**D. Whelan will deliver to Client:**

Evidence of insurance on a Texas Department of Insurance approved certificate form verifying the existence and actual limits of all insurance required hereunder after the execution and delivery of this Agreement and prior to the performance of any services by Whelan under this Agreement. Additional evidence of insurance will be provided on a Texas Department of Insurance approved certificate form verifying the continued existence of all required insurance no later than thirty (30) days after each annual insurance policy renewal.

**All above insurance policies**, with the exception of worker's compensation and employer's liability, will be endorsed and name The Board of Regents for and on behalf of The Texas A&M University System, The Texas A&M University System and Texas A&M University as Additional Insureds. Commercial General Liability and Business Auto Liability will be endorsed to provide primary and non-contributory coverage, except to the extent that any claims and damages are caused by the acts and omissions of any of the additional insureds or their employees, customers, invitees, or contractors of any tier (other than Whelan or its subcontractors, if any). The Commercial General Liability Additional Insured endorsement will include on-going and completed operations and will be submitted with the Certificates of Insurance.

**All insurance policies** will be endorsed to provide a waiver of subrogation in favor of The Board

of Regents of The Texas A&M University System, The Texas A&M University System and Texas A&M University. No policy will be canceled without unconditional written notice to Client at least ten days before the effective date of the cancellation. All insurance policies will either be endorsed to require the insurance carrier providing coverage to send notice to Client at least ten (10) days prior to the effective date of cancellation, material change, or non-renewal relating to any required insurance policy, or Whelan will provide this minimum notice.

Whelan is responsible to pay any deductible or self-insured retention for any loss that it is responsible for under this Agreement.

Certificates of Insurance and Additional Insured Endorsements as required by this Agreement will be mailed, faxed, or emailed to the following Client contact:

Department of Contract Administration  
Texas A&M University  
1182 TAMU  
College Station, Texas 77843-1182  
Facsimile: (979) 862-7130  
Email: [contracts@tamu.edu](mailto:contracts@tamu.edu)

The insurance coverage required by this Agreement will be kept in force until all services have been fully performed and accepted by Client in writing.

11. LIABILITY: Whelan agrees that the services it furnishes shall be in conformity with practices which are generally current in the security and event staffing industry. It is understood that Whelan is not an insurer, and the parties agree that Whelan makes no warranty, express or implied, that the services it furnishes will prevent or minimize the likelihood of loss or occurrences or the consequences therefrom which the services are designed to mitigate. Whelan's responsibility is solely limited to providing physical security services and event staffing as described in this Agreement and Whelan has not been engaged as a consultant or otherwise to provide an assessment of security and event staffing needs at the site(s) covered. Whelan shall provide services as agreed upon by Whelan and Client. If Client alters any instructions or directions given by Whelan to any security officers or event staffing or if Client, through the express action of a Vice President or above of Client, assumes any supervision of the security officers or event staff, Client shall be solely liable for any and all consequences thereof and agrees to indemnify, defend, and hold harmless Whelan from and against any and all losses, claims, expenses, or damages arising from or relating to the actions or omissions of such Client-supervised security officers to the extent permitted by the Constitution and laws of the State of Texas and without waiving sovereign immunity. In addition, Whelan's services shall not give rise to or confer any rights on any third party, and, to the extent permitted by the Constitution and laws of the State of Texas and without waiving sovereign immunity, Client agrees to indemnify defend, and hold harmless Whelan against any claims by third parties which are a proximate result of Client's negligence, willful misconduct, or breach of this Agreement.

Notwithstanding anything contrary herein, and to the extent permitted by the Constitution and laws of the State of Texas, Whelan shall not be liable to Client for an injury (including death) to any person arising from a slip, trip or fall while on or near the premises of Client which is not the proximate result of Whelan's negligence, willful misconduct, or breach of this Agreement. It is expressly understood and agreed that Whelan is not responsible for performing any maintenance services including but not limited to building upkeep, snow removal, garbage or debris removal and water removal.

12. INDEMNITY: Whelan shall indemnify, defend and hold harmless Client, and its affiliates (including but without limitation Texas A&M University, Inc.), officers, directors, employees, shareholders, successors, assigns and agents from, against and with respect to any and all losses, judgments, damages, fines, penalties, liabilities, demands, costs and expenses (including, without limitation, attorneys' fees, consultants' fees, experts' fees, and amounts paid in court costs or settlement), of any kind or nature whatsoever, asserted by any and all persons whomsoever, including, without limitation, the Event Staff and Personnel (as defined in Exhibit A) or other employees, agents or invitees of Whelan, on account of, relating to or arising out of (i) any negligent or grossly negligent act or omission or willful misconduct of Whelan or any Event Staff and Personnel in the course of performing Services for Client, (ii) any misrepresentation, breach of warranty or breach or non-fulfillment of any agreement or covenant of Whelan contained in this Agreement, (iii) any injuries to any Event Staff and Personnel or any other person arising out of the performance of Services for Client, (iv) any failure by Whelan to comply with any federal, state or local law in its capacity as employer of the Event Staff and Personnel, and (v) Whelan's employment of, or independent contractor relationship with, any Whelan employee, agent or contractor for work performed pursuant to this Agreement between Whelan and Client, including but not limited to, any claim of joint employment; benefits under any employee benefit plan of Client or its affiliates; discrimination of any kind, including but limited to, claims alleged under Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 1981, the Americans with Disabilities Act, the Older Workers Benefit Protection Act, and the Age Discrimination in Employment Act; retaliation; violation of the Fair Labor Standards Act; workers' compensation claims, violation of any Internal Revenue Service rule or regulation pertaining to withholding or payroll taxes; or violation of the Family Medical Leave Act. Client shall cooperate in the defense of any claims for which indemnification is available and shall, at Whelan's expense, furnish such records, information, testimony and attend such conferences, discovery, proceedings, hearings, trials, and appeals as may be reasonably requested by Whelan. Whelan acknowledges that the defense of any claim or action on behalf of Client is subject to the participation by and prior approval of the Texas Office of the Attorney General. Whelan's indemnity obligations as stated in this section shall not apply to the extent the claim or liability at issue was primarily caused by Client's negligence, willful misconduct, or breach of this Agreement.
13. EMPLOYEES: It is agreed that Whelan is not an employment agency and that the service it renders is made possible only by a substantial investment in advertising, recruiting, screening, testing, and training personnel to be effective employees at the Client's facilities. Therefore, in consideration of the monies Whelan has invested in these employees, it is agreed that in the event the Client employs any Whelan management personnel (or more than three Whelan non-management personnel) with a Client Vice President's actual knowledge of the individual's status as a Whelan employee at the time of hire, other than through Whelan, for security or event staffing purposes or any task directly or indirectly related thereto, during the period of this Agreement or within one (1) year from the date of termination of service provided by Whelan, the Client will pay Whelan the sum of two thousand dollars (\$2,000.00) per Whelan employee Client hires. The foregoing shall not apply where any such employee is responding to a publicly and generally advertised position by Client that is not related to the services and responsibilities performed by such employee under this Agreement and provided that such Whelan employee has not been directly recruited or solicited by Client.
14. SEVERABILITY: If any provision of this Agreement shall be held to be invalid or unenforceable for any reason, the remaining provisions shall continue to be valid and enforceable. If a court finds that



any provisions of this Agreement is invalid or unenforceable, but that by limiting such provision would become valid and enforceable, then such provision shall be deemed to be written, construed, and enforced as so limited.

15. **NOTICES:** Any notice required or permitted under this Agreement must be in writing, and shall 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, facsimile transmission, email, or other commercially reasonable means and will be effective when actually received. Client and Whelan can change their respective notice address by sending to the other party a notice of the new address. Notices should be addressed as follows:

Client: Texas A&M University  
Athletics Department  
1228 TAMU  
College Station, TX 77843-1228  
Attention: David Roubion  
Phone: (979) 862-5407  
E-mail: [droubion@tamu.edu](mailto:droubion@tamu.edu)

With a copy to: Texas A&M University  
Department of Contract Administration  
1182 TAMU  
College Station, TX 77843-1182  
Attention: Executive Director  
Phone: (979) 845-0099  
Fax: (979) 862-7130  
Email: [contracts@tamu.edu](mailto:contracts@tamu.edu)

Whelan: Whelan Event Staffing Services, Inc.  
1699 S. Hanley Road  
St. Louis, MO 63144  
Attention: Jeff Spoerndle  
Phone: (651) 400-7240  
E-mail: [jspoerndle@wesseventservices.com](mailto:jspoerndle@wesseventservices.com)

16. **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. The *Texas Family Code* requires the following statement: "Under Section 231.006, *Texas Family Code*, the vendor or applicant certifies that the individual or business entity named in this contract, bid, or application is not ineligible to receive the specified grant, loan, or payment and acknowledges that this contract may be terminated and payment may be withheld if this certification is inaccurate."
17. **PAYMENT OF DEBT OR DELINQUENCY TO THE STATE:** Pursuant to Sections 2107.008 and 2252.903, *Texas Government Code*, Whelan agrees that any payments owing to Whelan under this Agreement may be applied directly toward certain debts or delinquencies that Whelan 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.

18. PROHIBITED BIDS AND AGREEMENTS: A state agency may not accept a bid or award a contract that includes proposed financial participation by a person who received compensation from the agency to participate in preparing the specifications or request for proposals on which the bid or contract is based. The *Texas Government Code* requires the following statement: "Under Section 2155.004, *Texas Government Code*, the vendor certifies that the individual or business entity named in this bid or contract is not ineligible to receive the specified contract and acknowledges that this contract may be terminated and payment withheld if this certification is inaccurate."
19. PUBLIC INFORMATION: Whelan acknowledges that Client 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 Agreement, as well as any other disclosure of information required by applicable Texas law. Upon Client's written request, Whelan will provide specified public information exchanged or created under this Agreement that is not otherwise excepted from disclosure under Chapter 552, *Texas Government Code*, to Client in a non-proprietary format acceptable to Client. As used in this provision, "public information" has the meaning assigned Section 552.002, *Texas Government Code*, but only includes information to which Client has a right of access. Whelan acknowledges that Client 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*.
20. GOVERNING LAW: The validity of this Agreement and all matters pertaining to this Agreement, including but not limited to, matters of performance, non-performance, 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.
21. VENUE: Pursuant to Section 85.18, *Texas Education Code*, venue for any suit filed against Client shall be in Brazos County, Texas.
22. DISPUTE RESOLUTION: The dispute resolution process provided in Chapter 2260, *Texas Government Code*, and the related rules adopted by the Texas Attorney General pursuant to Chapter 2260, shall be used by Client and Whelan to attempt to resolve any claim for breach of contract made by Whelan that cannot be resolved in the ordinary course of business. Whelan shall submit written notice of a claim of breach of contract under this Chapter to the University Contracts Officer of Client, who shall examine Whelan's claim and any counterclaim and negotiate with Whelan in an effort to resolve the claim.
23. CONFLICT OF INTEREST: By executing and/or accepting this Agreement, Whelan and each person signing on behalf of Whelan 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 The Texas A&M University System ("TAMUS") or TAMUS Board of Regents, nor any employee, or person, whose salary is payable in whole or in part by Client or TAMUS, has direct or indirect financial interest in the award of this Agreement, or in the services to which this Agreement relates, or in any of the profits, real or potential, thereof.
24. CERTIFICATION REGARDING BOYCOTTING ISRAEL: To the extent that *Texas Government Code*, Chapter 2270 applies to this Agreement, Whelan certifies that (a) it does not currently boycott Israel; and (b) it will not boycott Israel during the term of this Agreement. Whelan acknowledges this Agreement may be terminated and payment withheld if this certification is inaccurate.
25. CERTIFICATION REGARDING BUSINESS WITH CERTAIN COUNTRIES AND ORGANIZATIONS: Pursuant to Subchapter F, Chapter 2252, *Texas Government Code*, Whelan certifies Whelan is not engaged in business with Iran, Sudan, or a foreign terrorist organization. Whelan acknowledges this Agreement may be terminated and payment withheld if this certification is inaccurate.



26. FRANCHISE TAX CERTIFICATION: If Whelan is a taxable entity subject to the Texas Franchise Tax (Chapter 171, *Texas Tax Code*), then Whelan certifies that it is not currently delinquent in the payment of any franchise (margin) taxes or that Whelan is exempt from the payment of franchise (margin) taxes.
27. LOSS OF FUNDING: Performance by Client under this Agreement may be dependent upon the appropriation and allotment of funds by the Texas State Legislature (the "Legislature"). If the Legislature fails to appropriate or allot the necessary funds, Client will issue written notice to Whelan and Client may terminate this Agreement without further duty or obligation hereunder. Whelan acknowledges that appropriation of funds is beyond the control of Client.
28. STATE AUDITOR'S OFFICE: Whelan understands that acceptance of funds under this 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 Section 51.9335(c), *Texas Education Code*. Whelan agrees to cooperate with the Auditor in the conduct of the audit or investigation, including without limitation, providing all records requested. Whelan will include this provision in all contracts with permitted subcontractors.
29. NON-WAIVER: Whelan expressly acknowledges that Client is an agency of the State of Texas and nothing in this Agreement will be construed as a waiver or relinquishment by Client of its right to claim such exemptions, privileges, and immunities as may be provided by law.
30. REPRESENTATIONS & WARRANTIES: If Whelan is a business entity, Whelan 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 Whelan has been duly authorized to act for and bind Whelan.
31. ENTIRE AGREEMENT: The Agreement, together with Client's Athletics Crowd Management Services RFP Main 19-0010, and the proposal from Whelan dated February 15, 2019, which is incorporated herein by reference, constitutes the entire Agreement and understanding between the Parties, and supersedes any and all prior or other Agreements, oral and written, between Whelan and Client. The parties acknowledge and agree that in the event of a conflict between the terms and conditions of the above-referenced RFP and proposal, the terms and conditions of this Agreement will prevail and control. No representations, inducements, promises or otherwise between the Parties not embodied herein will be of any force and effect. Any alteration, modification, or amendment of this Agreement must be in writing containing the signature of an authorized representative of each party.

Witness our signatures effective as of this 29<sup>th</sup> day of August, 2019.

Execution by the individuals below indicates their authority to bind their respective organizations to this contract.

Texas A&M University

Whelan Event Staffing Services, Inc.

By: [Signature]

By: Prentice Robertson (Aug 29, 2019)

Name: Jerry R. Strawser

Name: Prentice Robertson

Title: Executive Vice President and CFO

Title: Chief Operating Officer