

## **EXHIBITOR AGREEMENT**

This Exhibitor Agreement, including the Terms and Conditions on Schedule A attached hereto and made a part hereof (collectively, the “**Agreement**”), is made between American Physical Society (“**APS**”) and the party signing up for THE EVENT noted as (the “**Exhibitor**”, and together with APS, each a “**Party**”). This Agreement will become binding upon the date of purchase through the APS online Store.

### **Schedule A** **Terms and Conditions**

1. Acceptance/Entire Agreement: The participation of each Exhibitor in the Meeting is subject to acceptance by APS, and Exhibitor’s compliance with the terms of this Agreement. Any services and benefits that the Exhibitor is eligible for shall be determined by its Exhibitor Package. APS may withdraw its acceptance at any time prior to the Meeting by providing a refund of the total Exhibitor Amount to the Exhibitor, if APS determines that Exhibitor or its product is ineligible to participate. The Meeting dates, benefits, hours, and venue may be modified by information provided by APS to the Exhibitor in writing.

2. Payment: The Exhibitor agrees to pay the total amount due to APS with payment to be made by credit card. If the Exhibitor chooses to pay by invoice and only upon request to, and approval by, APS, payment must be made within 30 days upon receipt of the invoice. If the Exhibitor chooses to pay by credit card, the payment will be processed immediately upon receipt of the Exhibitor’s credit card information. The Exhibitor agrees to provide accurate and up-to-date billing information to APS for the purpose of payment processing. APS shall issue a receipt to the Exhibitor upon receipt of payment, which will serve as proof of payment.

In the event of late payment, the Exhibitor shall be responsible for any additional charges, including but not limited to late fees and interest, as permitted by law. All payments shall be made in US dollars and should include any applicable taxes or fees as required by law. APS reserves the right to suspend or cancel any services or benefits provided to the Exhibitor in the event of non-payment or late payment.

The Exhibitor acknowledges that failure to make payment in accordance with the terms specified in this clause may result in the Exhibitor’s removal from the event without refund. Any disputes regarding payments or invoicing shall be resolved in accordance with the dispute resolution clause specified in this contract.

The Exhibitor agrees to bear all costs associated with payment, including but not limited to bank fees or charges. APS reserves the right to modify the payment terms at its sole discretion, provided that notice of any changes is given to the Exhibitor in writing. This clause shall survive the termination or expiration of this contract.

### 3. Compliance:

a. Exhibitor shall be solely responsible for obtaining any licenses and permits, and payment of all taxes (including sales and use taxes), license fees or other charges applicable to its participation in the Meeting. Exhibitor shall comply with all applicable laws, regulations, and ordinances about its participation in the Meeting, including but not limited to rules of the Meeting venue and any relevant labor union, construction of the exhibit/display/booth in compliance with the ADA or its local equivalent, and the terms, conditions, and rules as may be issued by APS. Exhibitor shall ensure that their representatives shall comply with Meeting rules and regulations as may be established or provided from time to time by APS, including those as set forth on Annex 1 (the "**Meeting Rules**").

b. Exhibitor understands that this Agreement includes the [Code of Conduct](#). Exhibitor's participation in this event is subject to the Code of Conduct and is at Exhibitors' own risk.

c. Exhibitor agrees and understands that failure to comply with this Clause 3 is a material breach of this Agreement and APS may terminate all rights and benefits associated with the Meeting effective immediately and terminate this Agreement in accordance with Clause 7c). Exhibitor will indemnify APS against all claims, damages, losses, costs, expenses, demands or liabilities arising out of its breach of this Clause 3.

### 4. Intellectual Property:

a. Exhibitor hereby grants to APS a worldwide, non-exclusive, royalty-free, sub-licensable license to use its logos and trademarks, brand names, company names and any other materials (the "**Exhibitor Marks**") provided to APS: i) during the term of the Agreement to promote and exploit for the Meeting; and ii) following the Meeting in any report, publicity marketing materials, apps or websites, or promotional materials produced for the Meeting, or for archival purposes. APS acknowledges that all intellectual property rights in the Exhibitor Marks shall be solely and exclusively owned by the Exhibitor.

b. APS grants to the Exhibitor a non-transferable, non-exclusive, royalty free license to use the Meeting logo and trademarks (the "**Meeting Marks**"), during the term of this Agreement, solely to promote its attendance at the Meeting. Exhibitor shall comply with APS's reasonable instructions in relation to use of the Meeting Marks. Exhibitor acknowledge that all intellectual property and similar and related rights (including, without limitation, trademarks, copyright, design rights, know-how, confidential information, and goodwill) in and relating to the Meeting Marks, the Meeting and the services and any materials provided by or produced by APS in relation to the Meeting shall be owned by APS.

c. Other than in accordance with the rights and uses set out in this Agreement, neither party shall use the other party's intellectual property without written consent.

5. Confidential Information: The Exhibitor agrees that unless otherwise set out in this Agreement, both during the term of the Agreement and for a period of five (5) years after the termination of this Agreement: (a) the provisions under this Agreement; and (b) all technical, financial and other information or data provided to the Exhibitor in relation to APS, its affiliates or the Meeting in connection with this Agreement (together the "Confidential Information") shall be treated in the strictest confidence by the Exhibitor. Unless otherwise approved in writing by APS, Exhibitor shall

not share the Confidential Information with any other party save (i) to its employees, officers, representatives or advisors who need to know the Confidential Information for the purposes of complying with this Agreement and who are bound by confidentiality obligations at least at par under this Agreement; or (ii) as may be required by law, a court of competent jurisdiction of any governmental or regulatory authority. The restrictions set out in this clause shall not apply to any Confidential Information that (i) is generally available to the public without breach of this Agreement by the Exhibitor, its agents, representatives, or employees; (ii) was rightfully in Exhibitor's possession prior to disclosure under this Agreement; (iii) was independently developed by the Exhibitor without use of or reference to any or part of Confidential Information; or (iv) was rightfully received by the Exhibitor from a third party without a duty of confidentiality. Unauthorized use or disclosure of Confidential Information may cause substantial harm to APS for which damages alone may be an insufficient remedy. APS may seek appropriate equitable relief, in addition to other available remedies, for breach or threatened breach of this Section 5.

6. Alterations and/or Termination:

a. During the term of this Agreement, subject to compliance with Clause 2 above, if the Exhibitor determines it no longer wants to Exhibit the Meeting, Exhibitor may provide written notice to APS (a "**Termination Notice**") and terminate this Agreement, with such termination effective immediately, provided, however, if a Termination Notice is delivered to APS:

- i. less than 90 days prior to the Meeting, APS shall be entitled to retain one hundred percent (100%) of the Exhibitor Amount.
- ii. more than 90 days up to 120 days prior to the event, APS shall be entitled to retain seventy-five percent (75%) of the Exhibitor Amount
- iii. more than 120 days up to 180 days prior to the event, APS shall be entitled to retain fifty percent (50%) of the Exhibitor Amount
- iv. more than 180 days prior to the event, APS shall be entitled to retain twenty five percent (25%) of the Exhibitor Amount.

For the avoidance of doubt, upon delivery of a Termination Notice under this Section 6a), any unpaid portion of the Exhibitor Amount shall automatically accelerate and become due and payable, and until such amounts have been paid in full, Exhibitor shall not be entitled to any refund in accordance with the foregoing.

b. APS may cancel Exhibitor's participation and terminate this Agreement with no liability to the Exhibitor if Exhibitor does not make payment of the Exhibitor Amount in accordance with this Agreement.

c. In the event that the meeting is canceled by APS, APS will refund to Exhibitor such portion of the Exhibitor Amount (calculated by us in good faith) that reflects the total sums paid by the Exhibitor at the date of cancellation minus the value of any rights, goods and/or services provided by APS to the Exhibitor prior to the date of cancellation as Exhibitor's sole and exclusive remedy. Exhibitor will have no further recourse against APS. This refund shall be provided within 60 days of the cancellation notice. Furthermore, if the cancellation is due to a pandemic, including but not limited to a government-imposed lockdown or travel restrictions, the Exhibitor shall be entitled to a refund of the exhibitor fees paid for the designated space period, regardless of the timing of the cancellation. It is expressly understood and agreed that APS shall not be held responsible for any

other costs or expenses incurred by the Exhibitor in connection with the cancellation of the meeting. This includes, but is not limited to, any investments made with third party vendors such as decorator, audio visual, mobile app, virtual platform, conference hotels, and travel expenses, even if those entities are partnered with APS.

d. APS may cancel Exhibitor's participation and terminate this Agreement for cause if Exhibitor engages in any inappropriate behavior, violates any of the terms of this Agreement or violates the Meeting rules and regulations or local laws. In either such case, any payments made by Exhibitor are considered fully earned by APS and are nonrefundable. Exhibitor will have no further recourse against APS.

e. This Agreement shall remain in force from the date of execution until six (6) weeks following the close of the Meeting unless terminated earlier in accordance with the provisions of this Agreement.

f. Effect of Termination: Upon termination under this Clause 8:

- I. APS shall be entitled to re-sell the Exhibitor Package allocated to the Exhibitor to a third party;
- II. Exhibitor shall no longer be entitled to use the Meeting Marks;
- III. Exhibitor will immediately remove its property at the Meeting venue or related services, failing which such property shall be removed by APS at Exhibitor's expense; and
- IV. unless otherwise agreed by APS in writing, Exhibitor Representatives shall not be permitted entry to the Meeting.

7. Force Majeure: APS shall not be liable to the Exhibitor for any failure or delay herein, if such failure or delay is caused due to any reason beyond the reasonable control of APS, including, without limitation, strikes or other industrial disputes, failure of a utility service or transport network, act of God, war, riot, civil commotion, terrorism, explosion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm, earthquake, epidemic, pandemic, the venue unavailable or unfit for occupancy or substantially interfered with; or guidelines, warnings, advisories and/or orders issued by the World Health Organization, the United States of America including the CDC, the State of \_\_\_\_\_ and/or the City of \_\_\_\_\_ such that prohibit APS or guide, advise, warn or order registrants not to attend the Meeting. APS shall have the right to cancel all or a portion of the Meeting on written notification thereof. Following any such cancellation, Exhibitor shall be entitled to refund of Exhibitor Amount in accordance with Clause 8b) above, as its sole and exclusive remedy.

8. Indemnity: Exhibitor agrees to defend, indemnify, and hold harmless APS, affiliates, employees and agents, from and against any claims, damages, losses, costs, expenses, demands or liabilities (including all reasonable legal fees and expenses) ("**Claims**") arising out of or resulting from: (a) Exhibitor's construction or maintenance of an unsafe exhibit/booth, (b) material breach or non-performance of any of the provisions of this Agreement, (c) the use of the Exhibitor Marks under this Agreement, including any Claim that APS' use of the Exhibitor's intellectual property (including the Exhibitor Marks) in accordance with the Agreement violates or infringes any

intellectual property rights of any third party, (d) any grossly negligent or willful act or omission by Exhibitor or Exhibitor Representatives with respect to the subject matter of this Agreement.

**9. Warranties Disclaimer:** Exhibitor ACKNOWLEDGES THAT ACCESS TO THE MEETING SPACE IS PROVIDED “AS IS” AND APS MAKES NO REPRESENTATIONS OR WARRANTIES, ORAL OR WRITTEN, EXPRESSED, OR IMPLIED, ABOUT THE SPACE OR MEETING, INCLUDING, WITHOUT LIMITATION, ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. EXCEPT AS EXPLICITLY STATED HEREIN, APS DISCLAIMS ALL REPRESENTATIONS AND WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED (AND WHETHER BY STATUTE, LAW, OR A COURSE OF DEALINGS) TO THE MAXIMUM EXTENT ALLOWED BY LAW.

**10. Release:**

a. Exhibitor acknowledges that the Meeting may be reproduced or recorded and authorizes APS and its designees to record, transcribe, modify, or reproduce and distribute in any form and for any purpose any such recording of the Meeting which may include employees or agents or attendees of the Exhibitor (“**Exhibitor Representatives**”). Exhibitor is responsible to inform the Exhibitor Representatives, and grant APS the right to use and edit images, headshots or likenesses and we may record, film, photograph, or capture likeness in connection with Meeting provided under this Agreement without any further approval from or any payment to the Exhibitor or the Exhibitor Representatives.

b. Exhibitor hereby releases APS and its designees from and waives all claims it or the Exhibitor Representatives may possess, now or in the future, against such activities, and specifically waives any statutory restriction on future claims or moral rights. Exhibitor agrees to execute any additional release as may be required by APS.

c. Where Exhibitor receives any personal data in connection at the Meeting through electronic scanning of participant badges or otherwise, Exhibitor will process such data: (i) as a separate and independent controller; and (ii) in compliance with the requirements of applicable data protection laws in relation to your collection and subsequent processing of such personal data.

d. Exhibitor shall not use any attendee lists as may be provided by APS for purposes unrelated to the Meeting or to engage in pre-, during or post-Meeting unsolicited contact with such attendees. Exhibitor will use any attendee lists provided by APS in a manner compliant with all applicable laws, including without limitation GDPR and CCPA.

e. Exhibitor agrees and understands that failure to comply with this Clause 6 is a material breach of this Agreement and APS may terminate all rights and benefits associated with the Meeting effective immediately and terminate this Agreement in accordance with Clause 7c). Exhibitor will indemnify APS against all claims, damages, losses, costs, expenses, demands or liabilities arising out of its breach of this Clause 6.

**11. Limitation of liability:** APS shall not be liable for any indirect, special, consequential, punitive, or incidental damages, or for loss of revenue or profit in connection with the performance or failure to perform this agreement, regardless of whether such liability arises from breach of contract, tort or any other theory of liability, even if APS is advised of the possibility of such damages. APS shall

have no liability whatsoever to Exhibitor for any losses, injury (including death) expenses or damage to Exhibitor, its agents, representatives, contractors, guests, invitees, or any of their property, relating to or arising out of the acts of any other Exhibitor, or their respective agents, representatives, contractors, participants, guests, or invitees. In no event shall the total liability of APS under this Agreement exceed the Exhibitor Amount.

12. Insurance: The Exhibitor agrees to maintain sufficient and appropriate insurance coverage to support its obligations under this Agreement in terms no less than \$1 million USD. The Exhibitor shall provide APS with information and documentation, including an insurance certificate, evidencing such coverage upon request by APS or the Meeting venue. The Exhibitor shall ensure that APS is included as an additional insured party in its insurance coverage. This coverage shall indemnify and hold APS harmless from any claims, damages, liabilities, costs, or expenses arising out of or related to the Exhibitor's participation in the event. The insurance coverage shall include, but not be limited to, general liability insurance, property insurance, and worker's compensation insurance. The limits of coverage shall be adequate to protect both the Exhibitor and APS from any potential losses or damages. The Exhibitor shall provide APS with written notice of any changes or cancellations to its insurance coverage. Failure to maintain the required insurance coverage or provide timely notice of changes or cancellations may result in the Exhibitor's removal from the event without liability to APS. APS shall have the right to review the Exhibitor's insurance policy and request any additional information it deems necessary. APS reserves the right to require the Exhibitor to obtain additional or higher insurance coverage if deemed necessary to protect APS's interests. This clause shall survive the termination or expiration of this Agreement and shall continue to be in effect until all potential claims or liabilities arising from the Exhibitor's participation in the event have been resolved. Both APS and the Exhibitor acknowledge and agree that this insurance requirement is a material provision of this Agreement and failure to comply with this provision may constitute a material breach of the Agreement.

13. Relationship of the parties: Nothing in this Agreement shall be construed as creating an employer-employee relationship, a partnership or joint venture between Exhibitor, on the one hand, and APS and/or Meeting Management, on the other hand. The parties shall always have an independent contractor relationship.

14. Third Party Contractors: APS may require the Exhibitor to use third party contractors designated by APS ("**Designated Contractors**"). Those Designated Contractors act solely as independent contractors. APS is not responsible for any performance, acts or omissions of such Designated Contractors.

15. Governing Law, Jurisdiction, and Venue. In all respects, including without limiting the generality of the foregoing, matters of construction, validity, and performance, this Agreement and the obligations arising hereunder shall be governed by, and construed in accordance with, the laws of the State of New York applicable to contracts made and performed in such state (without regard to principles of conflict of laws) and any applicable law of the United States of America. Any legal suit, action or proceeding against any party arising out of or relating to this agreement must be

instituted exclusively in the federal or state courts located in the City of New York, County of New York. The parties stipulate, agree, and irrevocably consent that such court shall have subject matter and specific personal jurisdiction over the parties and that venue in said court is proper. Each party waives any objections which it may now or hereafter have based on jurisdiction and/or venue and waives any right to move for dismissal based on grounds of forum non conveniens, of any such suit, action or proceeding.

16. Miscellaneous: APS's rights in this Agreement may not be waived without APS's prior written consent. Exhibitor may not assign the Agreement without prior written consent from APS. This Agreement shall be binding upon the permitted successors, and assignees of the Exhibitor. If a court of competent jurisdiction finds any provision in this Agreement to be invalid or unenforceable, such finding shall not affect the validity and enforceability of the remaining provisions of this Agreement which shall continue in full force and effect. The obligations of the parties under Clause 2, 3, 4, 5, 6, 8, 12, 15 and 16 of this Agreement shall survive expiration or termination of this Agreement.

### **Annex -1** **Meeting Rules**

1. Meeting Passes: The Meeting passes provided to the Exhibitor are solely intended for Exhibitor only and may not be distributed to a third party without APS prior written consent. Meeting passes are assigned to specific Exhibitor Representatives by the Exhibitor and may not be reassigned or exchanged after the Meeting starts. APS reserves the right to expel and/or refuse future entry to both the person using a reassigned or exchanged badge as well as the original badge holder. It is mandatory that the Exhibitor has at least one (1) staff person present at the Exhibit based on designated exhibitor hours set by APS. APS reserves the right to not reprint or replace any lost badges.

2. Meeting Venue: Exhibitor agrees not to damage or deface any surface of the Meeting venue. Exhibitor shall comply with move-in and move-out deadlines shared by APS or the Meeting venue. Exhibitor shall be liable for all storage and handling charges resulting from failure to remove Exhibitor materials from the Meeting after the move out deadline.

3. Meeting Provided Booth: Exhibitor is allotted a Meeting provided booth for its own use, and Exhibitor may not assign or sublease or exchange any portion of the booth (including to an affiliated company) without APS's prior written consent. Exhibitor is responsible for keeping the aisles at the Meeting free of congestion caused by its demonstrations or other promotional activities. Exhibitor must submit materials and designs for its booth in format and as per schedule, as may be required by APS or the Meeting Management. APS may take up to five (5) business days for any approvals, rejection or suggest modifications under this Section 3. Modified materials or designs shall be re-submitted for approval accordingly.

4. Move in and Move out: Time periods, deadlines, and restrictions for move-in and move-out of exhibit areas shall be determined by APS in its sole discretion, and all exhibitors shall be given adequate notice thereof. Exhibitors shall adhere to the designated move-in and move-out times as

communicated by APS and designated Decorator. During move-in, exhibitors shall be responsible for the timely and efficient assembly of their exhibits. All exhibits must be fully assembled and ready for display by the designated opening time of the Expo. APS reserves the right to impose penalties or restrict future participation for exhibitors who fail to comply with the designated move-in deadlines or do not have their exhibits ready on time. During the Expo, all exhibit displays must remain staffed and fully intact until the end of the show. Premature dismantling of exhibits or failure to fully staff the exhibit space during the entire duration of the Expo is strictly prohibited. Exhibitors found in violation of this provision will not be eligible for any discounted rates for future booth space at APS conferences and may be subject to penalties imposed by APS. Move-out shall commence only after the designated closing time of the Expo. Exhibitors must dismantle their exhibits promptly and efficiently within the designated move-out period. Any damage caused to the venue or other exhibits during the dismantling process shall be the sole responsibility of the exhibitor. Exhibitors shall ensure that the exhibit space is left clean and in its original condition. All exhibitors are required to comply with any additional rules and regulations set forth by the venue, APS and the Decorator regarding move-in and move-out procedures. By accepting the booth space, the exhibitor acknowledges and agrees to abide by the rules and regulations outlined in this clause. APS reserves the right to enforce these rules and regulations at its discretion and take appropriate action against any exhibitor found in violation.

5. Exhibitor Promotional Materials: Exhibitor exhibits, promotional material, presentations, banners, and any other materials or information: (i) shall at all times be subject to prior written approval from APS; (i) must be restricted to the booth or space allocated to the Exhibitor at the Meeting venue; (ii) comply with all applicable laws and regulations (including the relevant advertising standards applicable in the USA); (iii) not be inaccurate, obscene, defamatory or disreputable; (iii) shall not, when used for the purposes of the Meeting or otherwise in accordance with the terms of this Agreement, infringe the rights of any third party; and (iv) not be detrimental to APS, the Meeting, to other exhibitors, Exhibitors or to general commercial interests of APS.

6. Exhibitor Presentations: Presentations by entertainers, spokespersons, or models will be allowed, pending advance written approval from APS. Any such presentations must be confined to the Exhibitor's contracted booth. No staff, presenters, or entertainers will be allowed to represent Exhibitor in other areas of the Meeting. If they are found outside a contracted booth or space, they will be removed from the Meeting. APS has the final right of approval on all event speakers, presentations, content and session formats, which approval shall not be unreasonably withheld.

7. Conduct of Business at Meeting: Exhibitor cannot exchange money or goods without the prior written consent of APS, nor may it assist other parties in soliciting business without that consent. Exhibitors shall not promote, endorse, market, or sell, directly or indirectly, any products, services, solutions, or other technologies at the Meeting or at the Meeting venue that in APS' sole discretion directly competes with the products, services, solutions, or technologies recommended by APS.

8. Conflicting programs: Unless notified and expressly permitted by APS in writing, Exhibitor shall not directly or indirectly invite Meeting attendees to any Exhibitor-organized events that compete, clash, or overlap with events at the Meeting or Meeting programming, including but not limited to sessions, breaks, breakfasts, lunches, or dinners.

9. Parallel promotions: Exhibitor may not use the Meeting to leverage or promote other Meetings/events in which they are an Exhibitor.



10. Exhibitor limitation: Exhibitor further agrees that it will not, during the period from two (2) days before until two (2) days after the Meeting, conduct, promote, endorse, or Exhibit any functions, classes, seminars, exhibits, or similar marketing activities like those at the Meeting within fifty (50) miles of the Meeting.
11. Social Media: Exhibitor shall not use social media including but not limited to X (formerly Twitter), Facebook, Instagram, etc. in a manner that denigrates the Meeting.
12. Photography or other Records: Exhibitors may photograph, videotape, or otherwise record their exhibit only. No photos or videos of Meeting attendees are allowed without prior consent.