

International Facility Management Association
Instructor License Agreement

This License Agreement ("Agreement"), is entered into this day _____, and effective as of said date, by and between **INTERNATIONAL FACILITY MANAGEMENT ASSOCIATION**, a not-for-profit corporation organized under the laws of Michigan whose principal place of business is 800 Gessner, Suite 900, Houston, Texas 77024-4257 (hereinafter, "IFMA") and _____ of _____ [location], a[n] individual [or perhaps LLC, corporation, etc.] (hereinafter, "Instructor").

The parties do hereby enter into the following agreement:

I. Definition and Recitals.

The educational material that is the subject matter of this agreement as outlined in Attachment A.

Recitals. R-1. Whereas IFMA is the owner of all rights in and to various trademarks, trade names, logos, initials and other symbols associated with IFMA, including common law rights, which marks, etc. include the IFMA name and logo itself; the "Certified Facility Manager" mark (including a drawing of a three-quarters circle, inside which are a capital C, small f and capital M small-case letters "c", "f" and "m", interlocked and multi-colored); and the "Facility Management Professional" mark, consisting of lower case "f", "m" and "p", multi-colored, with a semi-circle just above and between the "f" and the "m", partially enclosing the letters; and the "Sustainability Facility Professional" mark, consisting of lower case "s", "f", and "p", multi-colored, with a semi-circle just above all letters, partially enclosing the letters; and

R-2. Whereas IFMA possesses valid federal and/or state Trademark registrations for the above names, marks, logos, etc.; and

R-3. Whereas INSTRUCTOR desires a license to use only the IFMA name and logo, the "Certified Facility Manager" mark (including a drawing of a three-quarters circle, inside which are a capital C, small f and capital M small-case letters "c", "f" and "m", interlocked and multi-colored), the Facility Management Learning System logo and the Essentials of Facility Management logo solely for the purpose of teaching courses and providing instruction per the terms of this agreement; and

R-4. Whereas INSTRUCTOR desires a license to use only the IFMA name and logo and the EOFM logo; and

R-5. IFMA is willing to grant such licenses to INSTRUCTOR;

The foregoing Recitals are an integral part of this agreement and are hereby incorporated into and made a *part* of the *Agreement*, including all defined terms referenced therein.

Now, therefore, the parties do agree as follows.

I. No warranty or endorsement. IFMA neither endorses, vouches for, certifies, approves, recommends, nor makes any representations or warranties with respect to the courses provided by INSTRUCTOR pursuant to this agreement. IFMA disclaims any liability arising out of the presentation of the courses offered pursuant to this agreement. INSTRUCTOR shall take no action, nor fail to take any action, which creates the fact or inference of an endorsement, warranty or guarantee by IFMA of INSTRUCTOR activities.

II. Term of agreement; termination.

(a) The term of this agreement shall commence on the date first above written and shall expire on **December 31, 2019**.

(b) Notwithstanding the term of this Agreement:

- i. IFMA shall have the right to terminate the agreement immediately upon written notice to Instructor in the event of an actual or threatened violation of IFMA's intellectual rights in anything that is the subject-matter of this agreement, or in any of trade, service or certification marks;
- ii. Either party may terminate this Agreement upon written notice, if the other party is in material breach of any material term of this agreement and the other party fails to correct and cure that breach as soon as practicable under the circumstances, but in any event, no later than thirty (30) days after receiving written notice describing the breach;
- iii. Either party may terminate this Agreement upon written notice if the other party becomes insolvent or declares bankruptcy; or
- iv. Either party may terminate this agreement at any time and for any reason, upon 30 days' written notice to the other party.

(c) In the event of expiration, non-renewal, or termination of this Agreement:

- i. All rights of Instructor under this Agreement to use IFMA property or materials, including IFMA's intellectual property, and any promotional materials shall cease and Instructor shall either remove from any websites or other electronic outlets, destroy or return to IFMA, without making any copies, any and all materials bearing the IFMA imprint, marks or logos and discontinue the use of any of IFMA's Trademarks and copyrighted materials immediately; and
- ii. All obligations with respect to IFMA's intellectual property rights shall survive and continue in effect.
- iii. In the case of an infringement of IFMA's intellectual property (trademarks and copyrighted material) by the Instructor, the Instructor acknowledges that money damages alone may be an inadequate remedy. Therefore, in the event of a breach or threatened breach of any such provision of this agreement by Instructor, IFMA may, in addition to all other remedies, immediately seek to obtain and enforce appropriate injunctive relief.

III. Grant of license.

IFMA hereby grants Instructor a non-exclusive, non-assignable license for use to teach physical classroom courses in one of the following IFMA licensed venues: Chapters/Councils, In-house Corporate Program, IFMA Headquarter offerings, Colleges and Universities or Training Affiliates to offer the herein described course and to use the herein specified marks, strictly in accord with the terms and conditions of this agreement and for no other use or purpose. Instructors may not coordinate/advertise **public or government** classes or teach in a virtual environment unless a separate License agreement has been issued by IFMA for those specific venues. Unauthorized use of the course(s) or any IFMA materials may result in the immediate termination of this agreement, the immediate withdrawal of authority to teach the course(s) and/or use the marks, and statutory damages and other remedies for copyright and/or trademark infringement. Instructor may not sublicense the use of the Trademarks to third parties.

IV. Infringement; Notice of Infringement.

(a) INSTRUCTOR agrees to notify IFMA promptly: (a) of any known use of the Trademarks by others not duly authorized by IFMA; (b) if Instructor knows of, or suspects, infringement of IFMA's copyrighted materials by a third party; or (c) of any claim brought against Instructor for patent, trademark or copyright infringement by reason of Instructor's license from IFMA *or Instructor's use of IFMA Intellectual Property*

hereunder, within ten (10) days from the date it first learns of such claim by lawsuit or otherwise. Notification shall include all details known by INSTRUCTOR that would enable or aid IFMA in investigating such use or claim. INSTRUCTOR shall cooperate fully with IFMA in the prosecution of claims against third parties for patent, trademark or copyright infringement or misappropriation of trade secrets, by providing evidence, witnesses and other assistance reasonably requested by IFMA.

(b) Upon receiving notice as above:

- a. IFMA shall indemnify, defend and hold harmless from claims of patent, trademark or copyright infringement made against Instructor by a third party, provided that INSTRUCTOR has given IFMA the notice required herein, that is in full compliance with this Agreement, and further provided that Instructor cooperates fully with IFMA in the defense of the claims by providing evidence, witnesses and other assistance reasonably requested by IFMA. In the event that INSTRUCTOR invokes such indemnity, it shall be bound by IFMA's decisions with respect to the defense, trial and/or settlement of the action.
- b. If INSTRUCTOR brings any claim of infringement against IFMA, INSTRUCTOR's exclusive recourse will be to permit IFMA to replace the infringing material with non-infringing material serving the same purposes, to modify the infringing material so that it is not infringing, or to remove the infringing material.
- c. INSTRUCTOR shall indemnify, defend and hold harmless IFMA from all costs and damages of any kind for claims of infringement, of whatever kind, arising out of designs, drawings, specifications, translated material, and/or data supplied by or on behalf of; and/or for claims arising out of modifications to the IFMA Intellectual Property made by INSTRUCTOR or third parties following delivery of same by IFMA; and or for claims arising out of INSTRUCTOR's and/or a third party's use or application of the IFMA Intellectual Property in a manner that does not strictly comply with this Agreement.

V. Obligations of Instructor.

A. The course(s) and marks may only be used and taught by an Instructor who:

- i. has met the criteria for serving as an instructor for IFMA courses and programs as outlined in Attachment B. Such designation shall not in any way imply or be interpreted as an “endorsement” or recommendation of the Instructor, and the Instructor shall not do or say anything, expressly or implicitly, to lead others to believe the contrary;
 - ii. agrees to be bound by the terms of this agreement;
 - iii. agrees not to engage in activities detrimental to the image, supply chain or marketing of IFMA courses;
 - iv. agrees to the terms on the instructor handbook as outlined in Attachment C;
 - v. agrees to teach physical in-classroom courses; and
 - vi. Failure of the Instructor to abide by these terms and conditions at any time may result in the immediate termination of this agreement and in the immediate withdrawal of IFMA’s approval for the Instructor to deliver any or all of its courses or programs.
- B. Instructor shall not use course materials, the course or IFMA marks outside of this agreement. For example, Instructor may not use the program or marks in any consulting work s/he may do, for or without compensation; in conjunction with programs offered by any academic institution; in concert with any third party that is not IFMA. The foregoing examples are intended to be illustrative only and not exclusive.

- C. Instructor shall submit any promotional, advertising and/or marketing materials, to be used in any medium, for IFMA's prior written approval, which approval shall not unreasonably be delayed or denied by IFMA. No approval is needed for promotional material obtained from the Partner Resource Center.
- D. In presenting the course(s), Instructor shall use only the course components that are the subject matter of this agreement. Unless Instructor has obtained the prior written approval of IFMA, Instructor may not in any way modify the course contents or course materials by, for example, changing a course name; or adding any material to, deleting from, or updating the materials purchased from IFMA as texts for the courses offered. Nevertheless, Instructors may be allowed to enhance the program of study using practical experiences, public domain resources, and other appropriate adult learning activities so long as all enhancements are in compliance with all applicable copyright laws (see Attachment D as reference).
- E. An instructor will not engage in any conduct or behavior which is considered to be obscene or which is reasonably found to create a hostile, offensive or intimidating environment to persons of a particular gender, race, religion, national origin, sexual orientation, disability or military status.

VI. Covenant not to compete.

(a) Instructor agrees that while engaged as an instructor for IFMA, s/he will not promote her/his own nor other non-degree training programs/companies in the classroom nor will s/he use student or client information to promote her/his own nor other non-degree training programs/companies. In cases where IFMA becomes aware of a circumstance where the Instructor is causing damage to the IFMA brand or operating in a capacity that is not in IFMA's best interest then IFMA will have the right to terminate this agreement.

(b) If this covenant not to compete is declared or held to be illegal in any jurisdiction in which enforcement is sought, and that jurisdiction does not permit re-writing of the covenant, then it shall be deemed to be of no force or effect; shall be deemed to be stricken from the agreement; and shall not affect the validity or enforceability of any other clause in this agreement.

(c) If this covenant not to compete is deemed to be invalid or unenforceable in any jurisdiction which does permit the re-writing of covenants so as to make them valid and enforceable, then the parties agree that this covenant not to compete will be re-written by the parties themselves or the court so as to strike the invalid or unenforceable provisions and make the covenant valid and enforceable.

VII. Relationship between the parties.

The relationship between the parties is that of contractor (IFMA) and independent contractor (Instructor). Instructor is not the employee, agent, representative, joint venturer or partner of IFMA and shall not hold him or herself out to any third party as such. Instructor shall have no authority to speak for or bind IFMA and Instructor shall not say or do anything, or fail to say or do anything, expressly or by implication, to any third party to the contrary. Instructor will be paid for his or her work in presenting the course by the entity for or to whom the course is being taught. IFMA will not pay or be responsible for the fees or expenses of the Instructor unless instructor is under a separate contract with IFMA for specific services; Instructor shall look solely to the entity for or to whom s/he is presenting the course for payment. Instructor agrees that s/he will not sue, claim against or bring any sort of action against IFMA for payment (or nonpayment) of fees or expenses incurred in the presentation of the course. If Instructor does bring such an action and the court finds IFMA to be the prevailing party, then IFMA shall be entitled to recover all its costs and reasonable attorneys' fees in the action.

VIII. Notices.

All notices under this agreement shall be made in writing by either personal delivery or by certified mail, return receipt requested, as follows:

If to IFMA:

International Facility Management Association
800 Gessner Road, Ste. 900, Houston, TX 77024
713-623-4362
Samantha.Rosenthal@ifma.org

If to Instructor:

Name:
Mailing Address:
Telephone Number(s):
Email address:

Notice shall be deemed sufficient if given as above; it is the responsibility of each party to notify the other of any changes to the notice information given herein. Notice will be deemed to have been received, if delivered, on the date of delivery, or if mailed, on the date evidenced by the return receipt.

IX. Force Majeure.

Except as is otherwise expressly provided in this Agreement, no party shall be responsible for delays or failures in performance resulting from acts beyond its control. Such acts shall include, but not be limited to, acts of God, strikes, lock-outs, riots, acts of war, epidemics, governmental regulations superimposed after the fact, fire, earthquake, floods, or other disasters. If any such "force majeure" event shall persist beyond a period that is reasonable under the circumstances, either party may treat such event as preventing performance and may terminate this agreement.

X. Entire agreement.

Except as set forth herein, this agreement constitutes the entire agreement between the parties and supersedes all prior or contemporaneous agreements, negotiations, drafts, offers or counter-offers.

XI. Modification and waiver.

This agreement may not be amended except by a written instrument executed by the parties. The waiver of strict compliance with, or performance of, any of the terms or conditions of this agreement or of any breach thereof, by any party to this agreement, shall not be held or deemed to be a waiver of any subsequent or other failure to comply strictly with or perform the same or any other term or condition of this agreement or of any breach thereof.

XII. Severability.

Should any provision of this agreement be held unenforceable or in conflict with the law of any jurisdiction, then the validity of the remaining provisions shall not be affected by such a holding. In particular, if a court or other decision-maker determines that a provision of this agreement is invalid or unenforceable in any particular, then the parties hereby agree to amend, or to allow the court or other decision maker, to amend the provision in such a way so as to make it valid and enforceable.

Limitation of Liability. No party shall be liable for any indirect, consequential, incidental, special, or punitive damages hereunder.

- A. Assignment. No party shall assign this agreement without first obtaining the written consent of other party, except that either party shall have the right to assign this agreement if such assignment occurs in connection with a merger, consolidation or sale of substantially all of its assets to a third party.

- B. Governing law and jurisdiction. This agreement shall be governed by and construed in accordance with the laws of State of Texas without regard to its conflicts of laws provisions. In the event of any proceedings to enforce this agreement, the prevailing party – as determined by the court -- shall be entitled to recover its costs of the proceeding, including reasonable attorneys’ fees, but only those costs and attorneys’ fees that are incurred directly in or for that or those claim(s) on which the court determines the party has prevailed. The court will determine what is the proper award of costs and fees. The court will also determine whether an award of costs and fees is proportional to the success achieved by the prevailing party in the proceeding and if the court determines they are not, will adjust the award to be proportionate to the success achieved. Any and all proceedings of whatever nature to construe or enforce this agreement shall be brought exclusively in the federal or state court or other forum with jurisdiction in Houston, Texas and in no other place. **IN ANY PROCEEDING BROUGHT IN ANY COURT, THE PARTIES DO HEREBY WAIVE ANY RIGHT TO TRIAL BY JURY THEY OTHERWISE MIGHT HAVE HAD.**

IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed as of the date and year written under the signature line of the parties below.

INSTRUCTOR:

IFMA:

Printed Name

International Facility Management Association

By: _____
Signature

By: _____
Signature

Date

Samantha Rosenthal
Printed Name

Program Support Specialist
Title

Date