

**Santa Clara Unified School District and Facilitron, Inc.
Online Facilities Rental Storefront Agreement**

This Online Facilities Rental Storefront Agreement (this "Agreement") is made and entered into as of _____, 2017 (the "Effective Date"), by and between **Santa Clara Unified School District** (the "Client"), and Facilitron, Inc., a Delaware corporation (the "Company"). The Client and the Company may be referred to herein individually as a "Party" and collectively as the "Parties".

W I T N E S S E T H

A. WHEREAS, the Company is the operator of an Internet website which provides its customers with a web storefront for the presentation and rental of facilities; and

B. WHEREAS, the Client desires to present and rent its facilities on a storefront hosted by the Company ("the "Client Facilities Rental Storefront") upon the terms and subject to the conditions set forth herein;

NOW, THEREFORE, in consideration of the mutual promises contained herein and other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the Parties agree as follows:

A G R E E M E N T

1. Definitions. As used in this Agreement, the following terms shall have the following meanings:

(a) "**Company Site**" shall mean the Company's website maintained at www.facilitron.com and any successor or supplemental locations.

(b) "**Client Site**" shall mean Client's website maintained at: <http://www.santaclarausd.org/> and any successor or supplemental locations.

(c) "**End Users**" shall mean individuals or outside group representatives as well as any employee, contractor or agent of Client who uses Company's Site.

(d) "**Client Facilities**" shall mean the facilities that the Client intends to rent.

(e) "**Online Facilities Rental Storefront**" shall mean the website and ecommerce platform on the Company Site provided to Client by the Company for the purpose of renting Client Facilities to End-Users (www.facilitron.com/scusd95051 and any successor or supplemental locations).

(f) "**Services**" shall mean the act of setting up and populating Online Facilities Rental Storefront and Client Facilities for presentation and rental, providing additional offerings facilitating rental transactions, such as liability insurance, taking rental orders, processing of payments and disbursements, and providing the customer support.

(g) “**Transaction**” as used in the Exhibit “A” herein shall mean the total of each reservation by an End-User. For example, if a reservation is made that includes 20 uses of a Client Facility, the “Transaction” will be the total costs associated with all 20 uses.

2. Grant of Rights.

(a) Grant of Rights to Company. The Client hereby grants Company the non-exclusive right to present and rent Client Facilities to End-Users in accordance with the provisions of this Agreement during the Term.

(b) Appointment of the Company as Limited Payment Collection Agent for the Client. The Client hereby appoints Company as the Client’s limited payment collection agent solely for the purpose of accepting rental and service payments from End Users. The Client agrees that payment made by an End User through Company, shall be considered the same as a payment made directly to the Client, and the Client will make the facilities and services available to the End User in the agreed-upon manner as if the Client has received the fees. The Client agrees that Company may, in accordance with the cancellation policy selected by the Client (i) permit the End User to cancel the booking and (ii) refund (via Company) to the End User that portion of the fees specified in the applicable cancellation policy. The Client understands that Company accepts payments from End Users as the Client’s limited payment collection agent and that Company’s obligation to pay the Client is subject to and conditioned upon successful receipt of the associated payments from End Users. In accepting appointment as the limited authorized agent of the Client, Company assumes no liability for any acts or omissions of the Client.

(c) Pricing and Payment Terms. The Client shall determine the pricing for its facilities rental, application, equipment usage, custodial and other associated services provided by the Client (the “Client Fee”). **Company shall withhold a commission from the Client or charge End Users a service fee, as determined by the Client pursuant to Exhibit “A”, which is attached hereto and incorporated herein by reference.** Notwithstanding the foregoing, in no event shall the aggregate fees to be charged to End Users exceed those limits set forth in California law or Client’s board policies. Company shall remit all collected Client Fee payments for completed rentals minus applicable commission and any End User refunds by a check to the Client on a Monthly basis, and such funds must be sent by Company to Client by the 20th day of the following month.

(d) Audit. Upon at least 10 calendar days prior written demand to Company, the Client shall have the right, at its own cost and expense, to audit Company’s books, records, and accounts for the sole purpose of verifying payments reported under Section 2(c). Company shall provide all such relevant books, records, and accounts to Client upon such demand. If Client (through its certified public accountant or other appropriate auditor) concludes that additional amounts were owed during the audited period, Company shall pay such additional amounts within thirty (30) calendar days of the date the Client delivers to Company such accounting firm’s written report so concluding. The fees charged by such accounting firm shall be paid by the Client; provided, however, if the audit discloses that the payments payable by Company for such period are more than thirty percent (30%) of the amounts actually paid for such period, then Company shall pay the reasonable fees and expenses charged by such accounting firm in addition to any additional amounts owed.

3. Scope of Services.

Company shall be responsible for (a) designing and hosting facility rental websites equipped with rental application and payment processing for each facility, (b) maintaining the websites and calendar to ensure that the sites are functionable and actionable, (c) providing account management and customer personnel as are reasonably necessary to perform, maintaining and managing the services provided thereby, (d) coordinating all administrative functions associated with the Services, and (e) conducting any other operations reasonably necessary to perform the Services. Company shall comply with all industry standards, Client's reasonable requests, and all applicable law, in providing the Services.

4. Client Obligations.

(a) Solely for purposes of conducting the Services, Client shall use commercially reasonable efforts to assist Company in performing the Services by providing access to its staff, facilities, and updated rental availability data in a timely manner.

(b) The Client shall use commercially reasonable efforts to provide on its website and other communications, at its discretion, instructions, links, and other information to promote the Services therein.

5. No Transfer of Intellectual Property Rights. The Client and the Company acknowledge and agree that no transfer of any proprietary technology, inventions, developments, improvements, art, ideas, art form, or the like, including, but not limited to patents, patent applications, trademarks, copyrights or trade secrets (collectively, "Intellectual Property"), is intended in connection with this Agreement. Each Party's ownership interest in any Intellectual Property owned or licensed by such Party as of the date of this Agreement is not, and shall not be affected by the terms of this Agreement.

6. Trademarks: Client Marks and Company Marks.

(a) Subject to the terms and conditions of this Agreement, the Client grants Company a nonexclusive, nontransferable, revocable license to use the Client trademarks ("Client Marks") solely on the Online Facilities Rental Storefront and in connection with any promotions, marketing and press releases relating to the Services contemplated under this Agreement. The Client Marks are, and shall remain, the sole property of Client. Upon termination of the herein-granted license for any reason, the Company agrees to promptly discontinue use of the Client Marks.

(b) The Company's trademarks (the "Company Marks") are, and shall remain, the sole property of the Company. Client recognizes the Company's title to the Company Marks. Client shall use commercially reasonable efforts to not do or suffer to be done any act or thing which will in any way impair the rights of the Company in and to the Company Marks. It is understood that Client shall not acquire and shall not claim any title to the Company Marks adverse to the Company by virtue of the license granted herein, it being the intention of the Parties that use of the Company Marks by Client shall at all times inure to the benefit of the Company. Upon termination of the herein-granted license for any reason, Client agrees to promptly discontinue

use of the Company Marks except that historical records may remain and be subject to internet access and/or public records requests.

7. Privacy Policy.

Company shall ensure that all individual, aggregate and personally-identifiable customer data and information about the End Users collected by Company complies with all applicable laws and regulations, including, but not limited to the Children's Online Privacy Protection Act of 1998 (15 U.S.C. §§ 6501, et seq.), the Family Educational Rights and Privacy Act of 1974 (20 U.S.C. §§ 1232g, et seq.) and related regulations, relevant State law, and with Client's privacy policy and the Company's privacy policy (the "Privacy Policy"). To the extent any End-User data contains student data, pupil records, or other personally identifiable information of a student, Company agrees to comply with California Education Code Section 49073.1, the mandatory provisions of which are incorporated herein by reference. Company shall post, on at least the main page of the Online Facilities Rental Storefront, a copy or link to the Privacy Policy. The Privacy Policy must be prominently published on the web page and provide adequate notice, disclosure and choice to users regarding Company's collection, use and disclosure of user information. Company will ensure that the Privacy Policy does not create any liability to Client for the use of any customer or user data by either Party in any manner.

8. Confidentiality.

(a) Confidential Information. For purposes of this Agreement, "Confidential Information" shall mean any information disclosed by a Party hereto (the "Disclosing Party") to the other Party ("Recipient"), either directly or indirectly, in writing or by inspection of tangible objects (including without limitation documents, prototypes, samples, plant and equipment), which is designated as "Confidential," "Proprietary" or, if disclosed orally, is identified as confidential or proprietary at the time of its disclosure to the Recipient; provided, however, that any information relating to financial, product and business plans and strategies shall be deemed to be Confidential Information whether or not so designated. Notwithstanding the foregoing, Confidential Information shall not include any information which (i) was publicly known and available in the public domain prior to the time of disclosure to the Recipient by the Disclosing Party; (ii) becomes publicly known and available in the public domain after disclosure to the Recipient by the Disclosing Party through no action or inaction of Recipient; (iii) Recipient is able to demonstrate by documentary evidence that such information was lawfully in the possession of Recipient at the time of disclosure by the Disclosing Party; (iv) is independently developed by Recipient, provided Recipient can show by documentary evidence that such development was accomplished by or for Recipient without any use or beneficial reference to any Confidential Information; (v) is disclosed pursuant to legal, judicial or administrative proceeding or as otherwise required by law, provided that (A) Recipient gives reasonable prior notice to the Disclosing Party to allow it to seek a protective or similar order preventing or restricting the disclosure of such information, and (B) such information shall be deemed not to be Confidential Information only to the extent that such disclosure is compelled by such proceeding or law and only for the purpose of complying with such proceeding or law; or (vi) has been approved in writing for disclosure by the Disclosing Party.

(b) **Duty to Hold in Confidence.** Each Recipient agrees that, to the extent permitted by law, it will preserve in strict confidence and secure against accidental loss any Confidential Information disclosed by the Disclosing Party to Recipient. In preserving the Disclosing Party's Confidential Information, Recipient will use the same standard of care it would use to secure and safeguard its own confidential information of similar importance, but in no event less than reasonable care. Any permitted reproduction of the Disclosing Party's Confidential Information shall contain all confidential or proprietary legends that appear on the original.

(c) **Permitted Disclosures.** To the extent permitted by law, Recipient shall permit access to the Disclosing Party's Confidential Information solely to its employees, agents and contractors who have a need to know such information and the need to know is reasonably associated with the business associated with the Agreement. Except as permitted in the exercise of the rights granted under this Agreement, Recipient shall not disclose or transfer any Confidential Information to any third party, without the specific prior written approval of the Disclosing Party.

(d) **Obligation to Return Confidential Information.** Recipient acknowledges that the Disclosing Party retains ownership of all Confidential Information disclosed or made available to Recipient. Accordingly, upon any termination, cancellation or expiration of this Agreement, or upon the Disclosing Party's request for any reason (other than in violation of this Agreement), Recipient shall return promptly to the Disclosing Party the originals and all copies (without retention of any copy) of any written documents, tools, materials or other tangible items provided by the Disclosing Party to the Recipient containing or embodying Confidential Information; provided, however, that Recipient shall be entitled to retain such originals and copies of Confidential Information of the Disclosing Party as Recipient shall reasonably conclude are necessary to Recipient's use and exploitation, as permitted by this Agreement, of any rights retained by Recipient following such termination, cancellation, expiration or request..

9. Representations and Warranties.

(a) **Client Representations and Warranties.** Client represents and warrants to the Company as of the Effective Date that:

(i) **Authority.** Client has power and authority to execute and deliver this Agreement and to perform its obligations hereunder, and has by all necessary action authorized the execution and delivery of this Agreement and the performance of its obligations hereunder.

(ii) **No Conflicts.** The execution, delivery and performance by Client of this Agreement and each other agreement, document, or instrument now or hereafter executed and delivered by Client pursuant thereto or in connection herewith will not: (A) conflict with or violate the articles of incorporation or bylaws of Client or any provision of any law, rule, regulation, authorization or judgment of any governmental authority having applicability to Client or its actions; or (B) to the best knowledge of Client, materially conflict with or result in any breach of, or constitute a default under, any note, security agreement, commitment, contract or other agreement, instrument or undertaking to which Client is a party or by which any of its property is bound.

(b) **Company Representations and Warranties.** The Company represents and warrants to Client as of the Effective Date that:

(i) Corporate Authority. The Company is a corporation duly organized, validly existing, and in good standing under the laws of the jurisdiction of its incorporation, has the corporate power and authority to execute and deliver this Agreement and to perform its obligations hereunder, and has by all necessary corporate action authorized the execution and delivery of this Agreement and the performance of its obligations hereunder.

(ii) No Conflicts. The execution, delivery and performance by the Company of this Agreement and each other agreement, document, or instrument now or hereafter executed and delivered by the Company pursuant thereto or in connection herewith will not: (A) conflict with or violate the articles of incorporation or bylaws of the Company or any provision of any law, rule, regulation, authorization or judgment of any governmental authority having applicability to the Company or its actions; or (B) to the best knowledge of the Company, materially conflict with or result in any breach of, or constitute a default under, any note, security agreement, commitment, contract or other agreement, instrument or undertaking to which the Company is a party or by which any of its property is bound.

(iii) Binding Obligation. When executed and delivered by the Company and Client, this Agreement will be the valid and legally binding obligation of the Company in accordance with its terms, subject to bankruptcy, reorganization, insolvency, moratorium and similar laws and to general principles of equity which are within the discretion of courts of applicable jurisdiction.

(iv) Confidentiality Agreements. The Company has and will maintain with all the Company employees, agents, and consultants, written agreements sufficient to enable the Company to perform its obligations hereunder with confidentiality terms at least as restrictive as those provided for the Parties under this Agreement.

(v) Non-infringement. The Company represents and warrants that the Company Site and the Online Facilities Rental Storefront do not knowingly infringe any Intellectual Property Rights of any third party.

10. Termination.

(a) Term. The initial term of this Agreement shall be **twelve (12)** months from the Effective Date (the "Term"). Company will be the provider of Client Facilities Rental Storefronts for the Term, unless terminated early per Paragraph 10(b). Thereafter, this Agreement shall continue on a month-to-month basis unless terminated by either Party as set forth in Paragraph 10(c).

(b) Termination for Breach. In the event of a material breach of this Agreement by a Party (the "Breaching Party"), expressly including Company's failure to abide by the payment and reporting terms as set forth in the Agreement, this Agreement may be terminated by the non-breaching Party, effective upon delivery of written notice to the Breaching Party, unless within seven (7) business days after receiving written notice of such breach from the non-breaching Party the Breaching Party cures such breach (or agrees with the non-breaching Party on a plan to cure such breach, which agreement shall not be unreasonably withheld, conditioned or delayed by the non-breaching Party).

(c) Other Termination. Following the Term the Client or Company may terminate this Agreement at any time for any reason without cause. Written notice by the Client shall be sufficient to stop further performance of services by the Company. In the event of early termination, the Company shall be paid for satisfactory work performed to the date of termination. The Client may then proceed with any work-product, materials, and information completed by the Company in any manner the Client deems proper.

(d) Survival. Notwithstanding anything to the contrary in this Agreement, the provisions of Sections 5, 6 and 8 shall survive the expiration or earlier termination of this Agreement.

11. General Provisions.

(a) Limitation of Liability. IN NO EVENT SHALL EITHER PARTY HAVE ANY LIABILITY TO THE OTHER PARTY OR ITS AFFILIATES ON ANY CAUSE OF ACTION RELATING TO THIS AGREEMENT FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, OR SPECULATIVE DAMAGES, INCLUDING, BUT NOT LIMITED TO, DAMAGES FOR LOSS OF PROFITS OR USE, BUSINESS INTERRUPTION, OR LOSS OF GOODWILL, IRRESPECTIVE OF WHETHER SUCH DAMAGES ARISE UNDER CONTRACT, TORT, STATUTE, OR OTHERWISE AND WHETHER OR NOT THE PARTY HAS ADVANCE NOTICE OF THE POSSIBILITY OF SUCH DAMAGES. THESE LIMITATIONS SHALL APPLY NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY. COMPANY'S LIABILITY HEREUNDER SHALL BE LIMITED TO THE TRANSACTION FEES RECEIVED BY THE COMPANY DURING THE TERM OF THIS AGREEMENT.

(b) Assignment. This Agreement may not be assigned by either Party without the prior written consent of the other Party, which consent shall not be unreasonably withheld, conditioned or delayed, except that this Agreement may be assigned by any Party without the consent of the other Party (i) to any of the Party's majority-owned or controlled subsidiary entities or (ii) to any other entity resulting from the sale, merger, reorganization or other transfer of all or substantially all of the business or assets of the Party or its majority-owned or controlled subsidiary entities. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and permitted assigns.

(c) Headings. The section headings appearing in this Agreement are inserted only as a matter of convenience and in no way define, limit, construe or describe the scope or extent of such section or in any way affect the Agreement.

(d) Counterparts. This Agreement may be executed simultaneously in two or more counterparts, each of which will be considered an original, but all of which together will constitute one and the same instrument. The signature page of any counterpart may be detached therefrom without impairing the legal effect of the signatures thereon provided such signature page is attached to any other counterpart identical thereto except having additional signature pages executed by the other Party. Counterparts may be delivered by email or facsimile provided that original executed counterparts are delivered to the recipient within the next three (3) business days following the email or facsimile transmission.

(e) Notices. All notices and consents required to be given or made by the Parties shall be in writing and shall be deemed validly given if delivered by hand or sent by registered mail, return receipt requested, or confirmed facsimile to the following addresses:

If to Client: Santa Clara Unified School District
1889 Lawrence Road
Santa Clara, CA 95051
(408) 423-2000

If to the Company: Chief Executive Officer
Facilitron, Inc.
PO Box 1935
Los Gatos, CA 95031-1935
Telephone: 800-272-2962

Notice delivered by hand shall be deemed to have been received by the addressee on the date delivered. Notice given by registered or certified mail, return receipt requested, shall be deemed to have been received by the addressee on the date marked on the receipt. Notice given by confirmed facsimile shall be deemed to have been received by the addressee on the business day following the day on which it was sent.

(f) Entire Agreement. This Agreement and the Exhibits hereto are the complete agreement of the Parties relating to the subject matter hereof. This Agreement supersedes and governs any other prior or collateral agreements with respect to the subject matter hereof. Any amendment to this Agreement or any modification of any term of this Agreement must be in writing and be executed by an authorized officer of each Party.

(g) Governing Law, Dispute Resolution and Exclusive Venue. This Agreement shall be governed by and construed under the laws of the State of California, without reference to conflict of laws principles. The parties waive any objection to exclusive jurisdiction and venue in the state and federal courts located in Santa Clara County, California.

(h) Severability. The illegality or unenforceability of the whole or any part of the provisions of this Agreement will not affect the continued operation of the remaining provisions of this Agreement.

(i) Waiver. The failure of either Party at any time to insist upon strict performance of any of the terms and conditions contained in this Agreement will not be deemed a waiver of its right at any time thereafter to insist upon strict performance.

(j) Independent Contractors. The relationship of the Parties established by this Agreement is that of independent contractors, and nothing contained in this Agreement shall be construed to (i) give either Party the power to direct and control the day-to-day activities of the other, (ii) constitute the Parties as partners, joint venturers, co-owners or otherwise as participants in a joint or common undertaking, or (iii) allow either Party to create or assume any obligation on behalf of the other Party for any purpose whatsoever.

(k) Force Majeure. Neither Party to this Agreement shall be held responsible for any failure or delay in performance under this Agreement where such performance is rendered

impracticable by any act of war, compliance with laws, governmental acts or regulations, fire, flood, other natural disaster, epidemic, strikes and other causes similar to those listed, in each case where failure to perform is beyond the control, and not caused by the negligence, of the nonperforming Party ("Force Majeure").

(l) No Third Party Beneficiaries. Unless otherwise expressly provided, no provisions of this Agreement are intended or shall be construed to confer upon or give to any person or entity other than the Parties any rights, remedies or other benefits under or by reason of this Agreement.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their representatives thereunto duly authorized as of the date first written above.

"CLIENT"

"COMPANY"

Santa Clara Unified School District

Facilitron, Inc.

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

EXHIBIT “A” Company Fee Options

The Client shall determine the pricing for its facilities rental, application, equipment usage, custodial and other associated services provided by the Client (the “Client Fee”).

The Client shall select from one of the following End User service fee/commission options (*note: the Client may change the original selection at any time, even after the service has started, for all new reservations*):

Option 1: commission (default)

“The Client agrees to pay the Company a commission of 6% to 12% of the total Client Fee amount per Transaction which shall be deducted from the client’s payment. Company shall remit all collected Client Fee payments for completed rentals minus applicable commission and any End User refunds to the Client on a monthly basis, and such funds must be sent by Company to Client by the 20th day of the following month.”

The commission paid by the Client is based on the Client Fee amount charged by the Client in each bracket as follows:

On Transaction amount over	But equal or less than	Service Fee
\$0	\$500	12%
\$500	\$1,000	11%
\$1,000	\$1,500	10%
\$1,500	\$2,000	9%
\$2,000	\$2,500	8%
\$2,500	\$3,000	7%
\$3,000		6%

Example 1: Client Fee \$50. Service Fee/Commission = $\$50 \times 12\% = \6.00

Example 2: Client Fee \$625. Service Fee/Commission = $\$500 \times 12\% + \$125 \times 11\% = \$73.75$

Option 2: pass-through

“Company shall charge End Users a service fee in the amount of 6% to 12% of the total Client Fee amount per Transaction. Company shall remit all collected Client Fee payments for completed rentals minus any End User refunds to the Client on a monthly basis, and such funds must be sent by Company to Client by the 20th day of the following month.”

The service fee charged to the End User is based on the total Client Fee amount charged by the Client in each bracket as in the table above.

Option 3: split

“Company shall charge End Users a service fee in the amount of 5% of the total Client Fee amount per Transaction. The Client agrees to pay the Company a commission of 5% of the total Client Fee amount per Transaction, which shall be deducted from the Client’s payment. Company shall remit all collected Client Fee payments for completed rentals minus applicable commission and any End User refunds to the Client on a monthly basis, and such funds must be sent by Company to Client by the 20th day of the following month.”

In the Option 3 example above the flat 10% fee is split equally between the Client and End User. However, if Option 3 is chosen the Client may **select any split that totals 10%** (from 10% Service Fee & 0% commission to 0% & 10% and anything in between - for example: 5.7% Service Fee and 4.3% commission).

Company does not charge any fees for internal or any other bookings that result in a \$0 total fee to the requester.

Client has the ability to change facility use request prices and fees at any time, and the Company’s service fee and commission will be automatically adjusted accordingly. For example, if the Client adjusts prices and fees for a particular reservation to \$0 then the Company’s service fee and commission will automatically adjust to \$0.

Option 1 (commission) will be used if section below is left blank.

Fee Option Selection for Initial implementation

Client selects Option ____ Split (if Option 3): Commission ____% Service Fee ____%

(Please Initial):

Client _____