

RESEARCH FACILITY AND EQUIPMENT USE AGREEMENT

Location: _____

Company: _____

This Agreement is entered into effective as of the ____ day of _____, _____ by and between The University of Vermont and State Agricultural College with its principal place of business at 85 South Prospect Street, Burlington, Vermont 05405 (hereafter called “UVM”), which operates various facilities for research purposes, on its campus and _____ (“Company”), with its principal place of business at _____. When used in this Agreement, “Party” refers to either Company or UVM, as the context dictates, and “Parties” refers to Company and UVM jointly.

BACKGROUND

UVM’s research facilities and equipment are available primarily for the research activities of UVM’s students, faculty and other employees, but UVM also provides access to certain facilities and equipment for approved and appropriate purposes of third parties.

Company desires to use certain UVM research facilities and/or equipment, and UVM has agreed to allow Company to use only the research facilities and/or equipment listed on Exhibit C, (the “UVM Facilities”, “Facilities”, or “Equipment”), on the terms and conditions set forth in this Agreement.

The Parties, therefore, hereby agree as follows:

1. UVM Facilities Use. UVM shall provide Company with reasonable access to the UVM Facilities at reasonable hours and times, subject to the following:

1.1. Authorized Users. Only Company employees who are “Authorized Users” may use the UVM Facilities on Company’s behalf.

1.1.1. Attached to this Agreement as Exhibit A is a list of the Company’s employees who have been authorized by UVM to use the UVM Facilities and/or Equipment on Company’s behalf (“Authorized Users”). Authorized Users must satisfactorily complete the training referred to in 1.1.2. below prior to use of UVM Facilities and/or Equipment. If an individual on Exhibit A is no longer employed by Company or if Company desires to remove an individual as an Authorized User, the Company shall immediately notify UVM in writing and the individual will be removed as an Authorized User. If Company wants to add an employee as an Authorized User, Company shall notify UVM in writing together with the proposed employee’s qualifications, and the individual, if approved by UVM in its sole discretion, will be added as an Authorized User, subject to successful completion of the training referred to in 1.1.2. Exhibit A also reflects the Company designee who will be the responsible party on site. UVM shall at all times have sole discretion to determine who qualifies as an “Authorized User”.

1.1.2. An employee approved by UVM will become an Authorized User when the employee satisfactorily completes UVM training relating to UVM Facilities and/or Equipment

procedures, safety and equipment operation. (See Exhibit B- Training and <http://www.uvm.edu/safety/lab/safetytraining>).

- 1.1.3. An Authorized User's access to UVM Facilities is a privilege that may be revoked at any time by UVM in its reasonable discretion.

1.2. Approved Use.

- 1.2.1. A description of the planned use by the Company is detailed on Exhibit C. The Company and Authorized Users shall be permitted to use the UVM Facilities and/or Equipment only for the specific research purposes set forth on Exhibit C ("Approved Use").
- 1.2.2. The Approved Use must comply with the applicable UVM policies and practice for use of the UVM Facilities and/or Equipment throughout the term of this Agreement.

1.3. Conditions of Use.

- 1.3.1. Company may only use UVM Facilities and/or Equipment and during the hours and days for the purposes as more fully described on Exhibit C . UVM shall provide CATcard or other access to the UVM Facilities subject to its policies and in its reasonable discretion. Parking shall be available during the term of this Agreement for a limited number of Authorized Users by payment of the fees set forth on Exhibit D and subject to parking regulations promulgated by the UVM Transportation and Parking Services Division from time to time (see <https://www.uvm.edu/tps/parking/information/?Page=parking-rules.html>). Fabrication of devices, materials or other items for sale is prohibited.
- 1.3.2. The Company will keep and use the Equipment only at the UVM Facilities location on Exhibit C and only in connection with the Approved Use. The Company will keep the Facilities and/or Equipment in good condition, except for ordinary wear and tear and will not make any alterations, additions or replacements to the Facilities and/or Equipment without UVM's prior written consent. In UVM's sole discretion, all alterations, additions and replacements will become part of the Facilities and/or Equipment and UVM's property at no expense to UVM upon termination of this Agreement. UVM may inspect the Facilities and/or Equipment upon notice and reasonable time(s). To the extent that any portion of the Facilities and/or Equipment consists of software or other licensed products, the Company will return all tangible items of software and destroy all intangible items of software and shall certify in writing to UVM that it has complied with the above requirements, has not retained such software and will not use the software after termination. It is solely the Company's duty to remove all sensitive or confidential data stored within the Facility and/or Equipment prior to returning it to UVM.
- 1.3.3. The Company is responsible for any loss, theft or destruction of, or damage to, the Facilities and/or Equipment (collectively "Loss") related to its negligence, use or misuse of the Facilities and/or Equipment, whether or not insured, until it is delivered to UVM at the end of the term of this Agreement. The Company must notify UVM in writing immediately of any Loss. The Company will at UVM's option, either (a) repair the Facilities and/or Equipment so that it is in good condition and working order, eligible for any manufacturer's certification, or in the case of Equipment only, (b) replace the Equipment with equipment of a similar kind and quality that is reasonably acceptable to UVM.
- 1.3.4. Company may not bring any hazardous materials and/or Biological Select Agents or Toxins on site to UVM or use in the course of its access to or use of the UVM Facilities

and/or Equipment without the prior written consent of the UVM Risk Management, which shall be in UVM's sole discretion. The Company shall comply with any terms and conditions of such consent, such as restrictions on use, storage and handling.

1.3.5. Each Authorized User will be subject to, and required to comply with, UVM's rules, regulations, policies and procedures governing health, safety and personal conduct in connection with use of the UVM Facilities and/or Equipment.

1.3.6. Each Authorized User's activities shall be limited to uses set forth on Exhibit C and approved by UVM in accordance with this Agreement.

1.4. Compliance with Law. Company hereby represents and warrants to UVM that Company's use of the UVM Facilities and/or Equipment will not violate any applicable law, rule or regulation or any of Company's contracts with third parties or infringe any third-party rights, including, without limitation, any patent.

1.5. Confidential Information. Unless otherwise provided in a separate agreement, neither party has any obligation to keep information the other party provides to it in connection with use of the UVM Facilities and/or Equipment, or to which it gains access in the course of such use, confidential.

2. **Use Fees**. In consideration of use of the UVM Facilities and/or Equipment, Company shall pay UVM the fees as set forth on Exhibit D. Fees will be billed monthly and will be due and payable within 30 days following the date of invoice. All fees payable hereunder shall be paid in U.S. dollars, without reduction for taxes or set off.

3. **Term**. Unless earlier terminated in accordance with the terms of this Agreement, this Agreement will be in effect for a period commencing _____ and terminating _____. The Agreement may be earlier terminated by UVM for breach of the Agreement and not remedied within thirty days of written notice to Company, immediately in the event of any safety risk or risk of harm, or if fees that have been billed are more than thirty days in arrears.

4. **Intellectual Property Rights.**

4.1. Definition. For purposes of this Agreement, "Intellectual Property" means inventions, whether or not patentable, and copyrightable materials, including, without limitation, software and databases.

4.2. Ownership. Unless otherwise provided in a separate agreement:

4.2.1. Intellectual Property conceived, first reduced to practice, developed, produced or composed solely by Company personnel in the course of using UVM Facilities and/or Equipment for approved Company uses will be owned by Company ("Company Intellectual Property").

4.2.2. Intellectual Property conceived, first reduced to practice or developed produced or composed jointly by Company personnel and UVM personnel, fellows or students in the course of using UVM Facilities and/or Equipment for approved Company uses will be owned jointly by UVM and Company ("Joint Intellectual Property").

4.2.3. Notwithstanding the foregoing, Intellectual Property conceived, first reduced to practice, developed, produced or composed by UVM personnel, whether alone or with others, other than in the course of use of the UVM Facilities and/or Equipment approved by

UVM in accordance with this Agreement will be owned by UVM (“UVM Intellectual Property”).

4.3. Joint Intellectual Property.

4.3.1. Each Party will have the independent, unrestricted right to use, practice and dispose of its interest in Joint Intellectual Property in such manner as it deems appropriate without accounting to the other Party.

4.3.2. UVM will have the first right to file a patent application on potentially patentable Joint Intellectual Property in the names of both Parties. All expenses incurred in obtaining and maintaining any patent on such Joint Intellectual Property will be shared equally, except that, if one Party declines to share in such expenses, the other Party may take over the prosecution and maintenance thereof, at its own expense, provided that title to the patent application or patent remains in the names of both Parties. UVM reserves the right to license Joint Intellectual Property to third parties.

4.4. UVM License Rights. In the course of its use of the UVM Facilities and/or Equipment, Company may be exposed to, and may benefit from, existing Intellectual Property of UVM. In recognition of that fact, to the extent that any Company Intellectual Property constitutes an improvement to, or derivative of, existing Intellectual Property of UVM, Company hereby grants UVM a paid-up, royalty-free, nonexclusive, non- sublicensable right to use such Company Intellectual Property for research and education purposes.

4.5. Recordkeeping. Company shall cause its personnel to maintain, and deliver to UVM, adequate written research records and to execute all necessary papers and otherwise provide proper assistance, promptly upon UVM’s request and at UVM’s expense, during and subsequent to the period of this Agreement, to enable UVM to obtain, maintain and enforce for itself or its nominees, patents, copyrights or other legal protection for all UVM Intellectual Property and Joint Intellectual Property.

4.6. UVM Intellectual Property Policy. UVM’s Intellectual Property Policy is found at http://www.uvm.edu/policies/general_html/intellectualproperty.pdf and incorporated by reference.

4.7. Permits and Compliance. Company shall conform to and comply with UVM’s policies, procedures, rules and regulations, as they pertain to the use of Facilities and/or Equipment. Company shall also conform to and comply with all applicable municipal, county, state and federal ordinances, deed provisions, agreements, laws, rules and regulations in using the Facilities and/or Equipment and will not use the Facilities and/or Equipment so as to create any nuisance or in such manner as may tend to increase the University’s rates of any insurance on the Facilities and/or Equipment, except as authorized in this Agreement.

4.8. “As Is” Condition. Company has inspected the Facilities and/or Equipment and knows the condition thereof and acknowledges that it has received the Facilities and/or Equipment in as-is condition. Company shall keep the Facilities and/or Equipment in good order and repair during the Term and will repair and replace promptly any and all damage to the Facilities and/or Equipment caused by Company, its employees, or agents. Company shall promptly make, or cause to be made, such repairs or replacements that are Company’s responsibility. If Company fails to make such repair or replacement promptly, then the UVM may at its option, make those repairs or replacements, and Company will repay the costs thereof to UVM on demand. Prior to the expiration of the Term, or Termination of this License, Company shall

yield up peaceably the Facilities and/or Equipment to UVM in as good order and condition as when the same were entered upon by the Company, reasonable use and wear excepted.

- 4.9. Alterations. Company shall not make, or cause or permit to be made, any alterations, additions, or improvements whatsoever in or about the Facilities and/or Equipment, without first obtaining the prior written consent of UVM, which may be given or withheld in UVM's sole discretion.
- 4.10. Taxes. Company shall pay when due all federal, state, municipal or other taxes assessed against Company on account of Company's personal property on the Facilities and/or Equipment, and Company's use and occupancy of the Facilities and/or Equipment under this License.
- 4.11. Signs. Company shall not place any sign on the exterior or interior of the Facilities and/or Equipment without the prior written approval of UVM, which shall be in UVM's sole discretion.
- 4.12. Security and Access. Company shall conform to and comply with the UVM's policies and procedures regarding security and access to the Facilities and/or Equipment. Such policies and procedures are subject to change from time to time without notice. This may include, but is not limited to, obtaining a CATcard or key for each Company employee annually. It is the responsibility of Company to report any lost, missing or stolen CATcard or key to UVM as soon as possible. Company is solely responsible for all costs associated with obtaining and replacing the CATcards or keys, and any rekeying expense incurred by UVM as a result of lost CATcards or keys.

5. Disclaimer of Warranties. UVM HEREBY DISCLAIMS ALL REPRESENTATIONS AND WARRANTIES, EXPRESS OR IMPLIED, RELATING TO THE FACILITIES, EQUIPMENT, GOODS, SERVICES AND INFORMATION PROVIDED HEREUNDER, THE FUNCTION, CONDITION OR AVAILABILITY OF THE UVM FACILITIES AND/OR EQUIPMENT AND ANY RESULTS OBTAINED FROM THEIR USE, INCLUDING, WITHOUT LIMITATION, IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NONINFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS AND THE ABSENCE OF LATENT OR OTHER DEFECTS, WHETHER OR NOT DISCOVERABLE.

6. Limitation of Liability.

- 6.1. Company understands and acknowledges that there are risks in use of the UVM Facilities and/or Equipment, and Company voluntarily and knowingly accepts total responsibility and assumes all risk for injury to persons or loss of or damage to property arising from its use of the UVM Facilities and/or Equipment and from its interpretation and use of the results obtained from use of the UVM Facilities and/or Equipment. Company specifically releases UVM from liability therefor.
- 6.2. IN NO EVENT WILL UVM, ITS MEMBERS, TRUSTEES, OFFICERS, EMPLOYEES, STUDENTS, FELLOWS OR AFFILIATES BE LIABLE FOR MULTIPLE DAMAGES OR ANY INCIDENTAL, SPECIAL, CONSEQUENTIAL OR OTHER INDIRECT DAMAGES OF ANY KIND IN CONNECTION WITH THE COMPANY'S USE OF THE UVM FACILITIES AND/OR EQUIPMENT, INCLUDING, WITHOUT LIMITATION, LOST PROFITS AND INJURY TO PERSONS OR LOSS OF OR DAMAGE TO PROPERTY, REGARDLESS OF WHETHER UVM WAS ADVISED, HAD OTHER REASON TO KNOW OR IN FACT KNEW OF THE POSSIBILITY OF THE FOREGOING.

7. **Indemnity.** Company shall indemnify, defend and hold harmless UVM, its members, trustees, officers, employees, students, fellows and affiliates and their respective successors, assigns and heirs from and against any and all claims, liabilities, actions, losses, damages, costs and expenses of whatever nature or kind, which may arise, directly or indirectly, from Company's use of the UVM Facilities and/or Equipment (ordinary wear and tear excepted), including but not limited to property damage, personal injury or death, except to the extent they are caused by UVM's gross negligence or willful misconduct.
8. **Insurance.** Company shall maintain, during the term of this Agreement, (a) Worker's Compensation in accordance with applicable Vermont law, and (b) Commercial General Liability Insurance in the amount of One Million Dollars (\$1,000,000), naming UVM as an additional insured, and shall provide UVM with an insurance certificate and policy endorsement evidencing such coverage concurrent with execution of this Agreement. In the event that any policy referred to in the certificate expires during the term of this Agreement, Company shall provide UVM with a new insurance certificate and policy endorsement showing then current coverage. Company will provide UVM with at least 30 days' advance notice of any change to the coverage contemplated hereby. Company shall include in any of its insurance policies covering loss, damage, or destruction covered by "all risk" insurance a waiver of the insurer's right of subrogation against UVM or, if such waiver is unobtainable or unenforceable (i) an express agreement by such insurance company that such policy will not be invalidated if the insured waives or has waived before the casualty or liability the right of recovery against any party responsible for a casualty or liability or (ii) any other form of permission by such insurance company for the release of UVM. While the foregoing waiver of right of recovery is in effect, Company shall look solely to the proceeds of its insurance policies to compensate Company for any insured loss occasioned by fire, theft, vandalism, terrorism or malicious mischief or other insured casualty occurring to its property, personnel, Authorized Users or contractors while such Company property, personnel, Authorized Users or contractors are at UVM or using the UVM Facilities and/or Equipment. (See https://www.uvm.edu/~riskmgmt/?Page=insurance/contractorinsurancereqs.html&SM=insurance/insuranceclaims_submenu.html).
9. **Termination.**
- 9.1. Either Party may terminate this Agreement by providing written notice to the other if the other materially breaches this Agreement and does not remedy the breach within 30 days following written notice thereof or if circumstances beyond the Party's reasonable control preclude continuation of this Agreement.
- 9.2. UVM may terminate this Agreement at any time by providing written notice to Company if UVM ceases offering access to the UVM Facilities to third parties or if UVM revokes an Authorized User's access to the UVM Facilities.
- 9.3. Sections 1.5, 5, 6, 7, 8, 9, 10.3, 12 and 13, and any Party's obligation to pay the other any accrued, but unpaid amount, will survive termination of this Agreement.
10. **Use of Name.** Company shall not use the name of the University of Vermont or any abbreviation, variation or adaptation thereof, or the name of any of UVM's members, trustees, officers, employees, students or affiliates or any trademark owned by UVM in any written material or for any promotional purpose or other public announcement or disclosure without the prior written consent of UVM. (see, https://www.uvm.edu/policies/general_html/licensing.pdf).
11. **Notice.** Any notices given under this Agreement must be in writing and be addressed to the Parties at the addresses shown below or to such address as a Party may substitute for the address shown below

by notice to the other. Notices must be delivered by hand or by commercial express courier service and will be deemed to have been given or made as of the date received.

If to UVM: University of Vermont and State Agricultural College
Office of the Vice President for Research
85 South Prospect Street
Suite 320
Burlington, Vermont 05405

If to COMPANY: _____

12. Miscellaneous

12.1. Additional Provisions. UVM and Company agree to any additional provisions as outlined in Exhibit E, Additional Provisions, attached hereto.

12.2. Exhibits. Exhibits attached hereto include:
Exhibit A Authorized Users
Exhibit B Training and Safety Requirements
Exhibit C Facilities/Equipment Use
Exhibit D User Fees

12.3. Binding Effect; Assignment. This Agreement will be binding upon and inure to the benefit of the Parties hereto and their respective successors and permitted assigns. Neither Party may assign this Agreement or any of its rights or obligations hereunder without the prior written consent of the other Party.

12.4. Severability. If any provision of this Agreement or portion thereof is determined by a court or arbitrator of competent jurisdiction to be invalid or unenforceable, any enforceable portion of the provision and the remainder of this Agreement will remain in effect and the parties will request the court or arbitrator to reform the provision to a form that is valid and enforceable and reflects as closely as possible the intent of the original provision.

12.5. Entire Agreement. This Agreement (i) represents the entire understanding between the Parties with respect to its subject matter and (ii) supersedes all contemporaneous and previous statements, representations, agreements and understandings between the Parties, however expressed, that relate to the subject matter of this Agreement.

12.6. Independent Parties. UVM and Company are independent contractors, and neither is an agent, joint venturer or partner of the other. Neither Party has authority to take on any obligation, liability or expense on the other’s behalf or to act in any other manner on behalf of the other or in its name.

12.7. Third Party Beneficiaries. There are no third-party beneficiaries of this Agreement.

12.8. Governing Law. The validity and interpretation of this Agreement and the legal relationship of the Parties to it will be governed by the laws of the State of Vermont and applicable U.S. Federal law, without giving effect to the conflict of laws provisions thereof.

12.9. Force Majeure. Neither Party shall be liable for delays or any failure to perform due to causes beyond its control, including but not limited to acts of God, storm, fire, flood, earthquake, damage or destruction to facilities, health and/or public safety hazards, disease (including but

not limited to any declared or undeclared quarantine, outbreak, epidemic or pandemic), travel or other restrictions (or restrictions based on UVM protocol, directive or policy), labor disturbance, war, civil commotion, shortage or unavailability of labor, governmental law, ordinance, order or regulation, or for any other cause pursuant to UVM policy (“Force Majeure Event”) and may terminate this Agreement for a Force Majeure Event. If this Agreement is terminated pursuant to this Force Majeure provision, all deposits and pre-payments made by Company shall be promptly refunded. The Party invoking this Force Majeure provision may terminate this Agreement upon providing written notice (or other reasonable method under the circumstances) to the other Party at any time prior to a scheduled event.

- 12.10. Export Controls. Each Party covenants and warrants that it will not disclose or provide to the other any information or materials that constitute or contain information, technology or data identified on any U.S. export control list, including the Commerce Control List at 15 CFR 774 and the U.S. Munitions List at 22 CFR 121, unless and until it obtains the written consent of the other party. Company further covenants and warrants that it will not bring any export-controlled goods, software or technology to UVM without UVM’s prior written consent.
- 12.11. Amendments. Amendments or changes to this Agreement must be in writing and signed by duly authorized representatives of the Parties.
- 12.12. Counterparts. This Agreement and any amendment hereto may be executed in counterparts and all such counterparts taken together will be deemed to constitute one and the same instrument. If this Agreement or any amendment is executed in counterparts, no signatory hereto will be bound until all Parties have duly executed a counterpart of this Agreement.
- 12.13. Modification. This License may be amended only upon mutual agreement in writing by duly authorized representatives of both parties.
- 12.14. Attorney’s Fees/Interest. Company will be charged interest on all overdue accounts according to the rate established by the UVM and authorized by law at the time interest is charged. Non-payment of any amount due is cause for termination of the License in the UVM’s sole discretion . UVM will be entitled to an award of its reasonable attorney’s fees in the event of any action to recover overdue amounts.

ACCEPTED AND AGREED TO:

UNIVERSITY OF VERMONT 1

By: _____
Kirk Dombrowski, Vice President for Research

COMPANY: _____

By: _____

Name: _____

By: _____

Name: _____

1 To the extent the facility is a Bond-financed UVM Facility, this Agreement shall require the UVM Vice President for Finance and Administration's prior approval.

All agreements with third parties who sponsor research in UVM Bond-financed facilities shall comply with applicable IRS safe harbor requirements (currently, IRS Revenue Procedure 2007-47) or shall be approved by the Vice President for Finance and Administration after consulting with Legal Counsel.

EXHIBIT A

AUTHORIZED USERS

Name	Title	Email	Phone

EXHIBIT C
FACILITIES/EQUIPMENT USE

UVM Facilities Description:

UVM Equipment Description:

Approved Use Description:

Hours of Operation:

EXHIBIT D

USER FEES

Item	Amount	Note
Space Use		
Telephone		
Internet		
Utilities		
Trash/Recycling		
Hazardous Waste		
CATcard/Keys		
Parking		
Other		
Other		