**RESEARCH FACILITY AND EQUIPMENT USE AGREEMENT**

This Agreement is entered into effective as of the \_\_\_\_\_\_\_\_day of \_\_\_\_\_\_\_\_\_\_\_\_\_, 2020 (the “Effective Date”) 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

1. 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.

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

The Parties, therefore, hereby agree as follows:

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

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

* + 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 on Company’s behalf (“Authorized Users”). Authorized Users must satisfactorily complete the training referred to in 1.1.2 below prior to use of the UVM facilities. 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”.
    2. An employee approved by UVM will become an Authorized User when the employee satisfactorily completes UVM training relating to UVM Facilities procedures, safety and equipment operation. (See Exhibit B- Training) https://www.uvm.edu/riskmanagement/training
    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. **Approved Use.**

* + 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 Equipment only for the specific research purposes set forth on Exhibit C (“Approved Use”). .

* + 1. The Approved Use must comply with the applicable UVM policies and practice for use of the UVM Facilities throughout the term of this Agreement.
  1. **Conditions of Use.** 
     1. Company may only use UVM Facilities for the purposes as more fully described on Exhibit C and during the hours and days also described on Exhibit C. UVM shall provide key cards 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 E and subject to parking regulations promulgated by the UVM Transportation and Parking Services.
     2. Company may not bring on site to UVM or use in the course of its access to or use of the UVM Facilities and/or Equipment any hazardous materials and/or Biological Select Agents or Toxins without the prior written consent of the UVM Director of 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. 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.
    2. 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. **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.
  2. **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, or to which it gains access in the course of such use, confidential.

1. **Equipment Use.** 
   * 1. During the term of this Agreement, Company may only use the UVM

equipment listed on Exhibit D (the “Equipment”) and only in connection

with its use of the UVM Facilities for the purposes described on Exhibit C.

* + 1. 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 Equipment in good condition, except for ordinary wear and tear and will not make any alterations, additions or replacements to the Equipment without UVM’s prior written consent. All alterations, additions and replacements will become part of the Equipment and UVM’s property at no expense to UVM upon termination of this Agreement. UVM may inspect the Equipment upon notice and reasonable time(s). To the extent that any portion of the 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 Equipment prior to returning it to UVM.
    2. The Company is responsible for any loss, theft or destruction of, or damage to, the Equipment (collectively "Loss") related to its negligence, use or misuse of the 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 Equipment so that it is in good condition and working order, eligible for any manufacturer's certification, or (b) replace the Equipment with equipment of a similar kind and quality that is reasonably acceptable to UVM.

1. **Use Fees.** In consideration of use of the UVM Facilities, Company shall pay UVM the fees as set forth on Exhibit E. 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.
2. **Term.** Unless earlier terminated in accordance with the terms of this Agreement, this Agreement will be in effect for a period commencing on the Effective Date and terminating on\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_. 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.
3. **Intellectual Property Rights**.

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

* 1. **Ownership.** Unless otherwise provided in a separate agreement:

* + 1. Intellectual Property conceived, first reduced to practice, developed, produced or composed solely by Company personnel in the course of using UVM Facilities for approved Company uses will be owned by Company (“Company Intellectual Property”).

* + 1. 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 for approved Company uses will be owned jointly by UVM and Company (“Joint Intellectual Property”).

* + 1. 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 approved by UVM in accordance with this Agreement will be owned by UVM (“UVM Intellectual Property”).

* 1. **Joint Intellectual Property.**

* + 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.

* + 1. 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.

* 1. **UVM License Rights.** In the course of its use of the UVM Facilities, 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.

* 1. **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.
  2. **UVM Intellectual Property Policy**. UVM’s Intellectual Property Policy is found at <https://www.uvm.edu/sites/default/files/UVM-Policies/policies/intellectualproperty.pdf> and incorporated by reference.

1. **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.
2. **Limitation of Liability.** 
   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 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.
   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.

1. **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.

**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.

1. **Termination.**
   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.
   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.
   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.

1. **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.
2. **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

Vice President for Research

Waterman Building 330

85 South Prospect Street

Burlington, Vermont 05405

Email: spa@uvm.edu

If to COMPANY:

1. **Miscellaneous**

* 1. **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.

* 1. **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.

* 1. **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.
  2. **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.

* 1. **Third Party Beneficiaries.** There are no third party beneficiaries of this Agreement.

* 1. **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.

* 1. **Force Majeure.** Neither Party will be liable for any delay or default in performing any of its obligations hereunder if such delay or default is caused by conditions beyond its reasonable control, including, without limitation, natural disasters, fire, government restrictions, war, terrorism, civil unrest or insurrection.

* 1. **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.

* 1. **Amendments.** Amendments or changes to this Agreement must be in writing and signed by duly authorized representatives of the Parties.
  2. **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.

ACCEPTED AND AGREED TO:

**University of Vermont (1) [INSERT COMPANY NAME]**

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Authorized Signing Official Authorized Signing Official

Name: Name:

Title: Title:

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Vice President of Finance

(1) To the extent the facility is a Bond-financed UVM Facility, this Agreement shall require the UVM Vice President for Finance’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 after consulting with Legal Counsel.

EXHIBIT A

AUTHORIZED USERS

EXHIBIT B

TRAINING REQUIREMENTS

EXHIBIT C

UVM FACILITIES DESCRIPTION, APPROVED USE DESCRIPTION,

DAYS AND HOURS OF APPROVED USE

EXHIBIT D

EQUIPMENT DESCRIPTION

EXHIBIT E

USER FEES

(i.e: user fees, equipment fees, laboratory fees, telephone, internet, utilities, parking, etc.)