

FACILITIES AND EQUIPMENT USE AGREEMENT

This Facilities and Equipment Use Agreement (“Agreement”) is made as of DAY of MONTH, YEAR (“Effective Date”), by between the Research Foundation for the State University of New York on behalf of the University at Buffalo (“Foundation”) and COMPANY (“User”) regarding the User’s use of Foundation facilities and equipment located at the FACILITY NAME..

Statement of Work:

FACILITY NAME is offering User’s employee, EMPLOYEE NAME (“Employee”), access to SPECIFIC EQUIPMENT (“Equipment”) available at LOCATION (“Facility”) for PURPOSE (“Purpose”).

User agrees to the following:

- a. **Access to Equipment/Facility:** Employee will be provided with Equipment/Facility access during the term of this agreement, during normal business hours (8:30am – 5:00pm, Monday through Friday, unless authorized otherwise), upon completion, submittal, and approval of the following documents via the following online portal (<http://www.buffalo.edu/shared-facilities-equip/Getting-started/cleanroom.html>):
 1. New User / Scope of Work Document
 2. Facility Governance Document
 3. Certification of Required Laboratory Safety Training within the previous 12 months for 40 CFR 262 (RCRA Hazardous Waste) and 29 CFR (OSHA Right to Know)
 4. Facility Initial Orientation
- b. **Scheduling of Facilities/Equipment:** Employee shall contact the Facility Manager (MANAGER NAME; EMAIL) to discuss the Purpose of each individual project for which the Employee wishes to make use of Equipment/Facility. Following approval of Purpose, Employee reservations for use of Equipment/Facility may be scheduled via the Facility’s online reservation system, if available, or by contacting the Facility Manager, if such system is not available.
- c. **Limited Use:** Employee may use the Equipment at the Facility to perform the Purpose and for no other purpose without prior consultation with Facility Manager. Equipment/Facility is made available for research and testing purposes only. Use of Equipment/Facility for commercial production of materials and devices is strictly prohibited. For clarity, fabrication of devices or development of other materials for sale, or use, or to provide a commercial service to a third party are strictly prohibited.
- d. **Training:** Foundation will provide training on safe and effective operation of each piece of equipment required by Employee to conduct work within the defined Purpose. Employee is prohibited from making use of equipment on which they have not been trained by Foundation, and any Equipment that falls outside the Purpose, without prior written approval of the Facility Manager.
- e. **Fees:** User is responsible for payment of hourly fees incurred through Employee’s use of Equipment/Facility, as well as any fees incurred for technical support provided by Facility personnel.
- f. **Term:** The term of this Agreement will be for a period of one year from the date of execution, unless extended by mutual written agreement.
- g. **Employee Access:** Employee will be issued a UB ID Card, which will provide swipe-card access to Facility for the duration of this agreement. Employees will only be on site for the Purpose.
- h. **Affiliation:** If Employee’s relationship with User is terminated, User will notify the Facility Manager and this Agreement will automatically terminate and thus all access rights to the Facility and Equipment shall be revoked immediately.
- i. **Liability:** User acknowledges that it may be financially liable for any equipment or other property damage if it is found to be the result of negligence or violation by the User of this Agreement.

- j. **Limitation of Liability:** EXCEPT TO THE EXTENT OF FOUNDATION'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, UNDER NO CIRCUMSTANCES SHALL FOUNDATION BE LIABLE TO USER OR ANY THIRD PARTY FOR ANY SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE, EXEMPLARY OR CONSEQUENTIAL LOSSES OR DAMAGES OF ANY KIND WHATSOEVER (INCLUDING, BUT NOT LIMITED TO, LOST BUSINESS, LOST PROFITS, LOST REVENUES, OR LOST DATA) HOWEVER ARISING, WHETHER CLAIMS FOR SAID LOSSES OR DAMAGES ARE PREMISED ON CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE, IRRESPECTIVE OF THE NUMBER OR NATURE OF THE CLAIMS. THE PARTIES AGREE TO THE ALLOCATION OF LIABILITY SET FORTH IN THIS SECTION.
- k. **Indemnification:** User assumes all risks incidental to its use of the Facilities and Equipment and shall be solely responsible for any and all accidents and injuries to persons (including death) and property damage arising out of or in connection with such activities caused by the actions of User, its officers, employees, agents, or assigns and agrees to indemnify and hold harmless Foundation for any and all liabilities, penalties, claims, suits, actions, damages, expenses (including attorneys' and counsel fees), judgments, and costs of every nature and description (collectively "Claims") arising out of or relating to User's performance of the Purpose, provided that such indemnification shall be limited to the extent that any such Claim arises out of Foundation's gross negligence or willful misconduct. User further agrees, upon request, to assume the defense and to defend, at its own cost and expense, any action brought at any time against the Foundation with respect to such Claims. For the purpose of this subsection, Foundation means Research Foundation for the State University of New York, State of New York and the State University of New York, its subsidiaries and affiliates and their respective directors, officers, employees, agents and representatives. This indemnity provision shall survive the expiration or any earlier termination of this Agreement. For purposes of this Section, User waives as a complying employer, its immunity, if any, provided under the New York Workers' Compensation Law, and all similar and/or related laws, rules and regulations.
- l. **Insurance:** User shall maintain at its sole cost and expense, with reputable insurance companies, public liability insurance covering User, with coverage limits of at least \$1 million per claim and \$2 million in the aggregate, for total claims arising from any one casualty to protect against liability hereunder. Foundation reserves the right to request proof of same for the purpose of ascertaining compliance with this Agreement.

SIGNATURES ON FOLLOWING PAGE

Shared Instrumentation Laboratories

IN WITNESS WHEREOF, this Agreement has been duly executed by the parties hereto as of the date hereinabove first written.

USER:

Signature Date

Print Name Title

Address Email/Phone Number

THE RESEARCH FOUNDATION FOR THE STATE UNIVERSITY OF NEW YORK:

Signature Date

Print Name Title

SAMPLE