

LABORATORY USE AGREEMENT

THIS LABORATORY USE AGREEMENT (“Agreement”) is made as of the date of the last signature below (the “Effective Date”) by and between **NORTH CAROLINA STATE UNIVERSITY**, on behalf of its _____ (“NC State”), and _____ (“User”), who is not an NC State student or employee. NC State and User may be referenced collectively in this Agreement as the “Parties” or each individually as a “Party.”

WHEREAS, NC State owns and operates, or lawfully controls the use of the _____ Laboratory (“Laboratory”) located in the _____ Building on the campus of NC State; and,

WHEREAS, User desires to use the Laboratory in connection with an NC State-approved Statement of Work, attached hereto as **Exhibit A**, for the limited times and purposes set forth herein; and,

WHEREAS, NC State desires to permit User’s use of the Laboratory pursuant to the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. **Term.** The term of this Agreement shall commence upon the Effective Date and shall terminate on _____ (the “Term”).

2. **Permitted Use.** This Agreement permits User the temporary use of the Laboratory during the Term for the following date(s) and time(s) and for the following purposes and no other:

a. Date(s) of use:

b. Time(s) of use:

c. Purposes of use:

3. **Laboratory Use Fee.**

a. User shall pay the sum of \$ _____ per hour for use of the Lab (the "Fee").

b. The Fee shall include the following:

i. Use of the Laboratory.

ii. Additional services:

c. In addition to the Fee, User shall be responsible for paying any and all expenses incurred by NC State in support of or as a result of the User's use of the Laboratory ("Additional Expenses"). Such Additional Expenses may include, but are not limited to, cleaning costs; security costs; parking fees; and, setup and takedown costs, unless otherwise indicated in subsection (ii) above.

d. User shall remit payment for the Fee and all Additional Expenses within thirty (30) days of receipt of an invoice from NC State.

4. **Access to Laboratory.** It is agreed that an NC State representative will be present daily to permit User's access to the Laboratory and will secure the Laboratory at the conclusion of each day's use.

5. **User's Obligations.**

a. **Compliance With Applicable Law.** User shall at all times use and occupy the Laboratory in an orderly manner in full compliance with all NC State policies, regulations, rules, and practices and with all applicable federal, state and local laws, ordinances, codes, rules, regulations and licensing requirements applicable to its use of the Laboratory.

b. **Conduct.** User acknowledges that the Laboratory and its surroundings are utilized by a community of professional and student researchers. As such, courteous, professional, responsible behavior is expected at all times.

c. **Laboratory Safety.**

i. User warrants that it shall provide all necessary and appropriate safety instruction to all employees, representatives, agents and invitees entering or using the Laboratory pursuant to this Agreement. User further warrants that it shall abide by all applicable Laboratory policies. Within ten (10)

days of request by NC State, User shall provide written certification of its compliance with these requirements.

- ii. Processes with the potential to affect the safety of others in the vicinity of the Laboratory or adversely affect Laboratory equipment are not permitted without the express prior approval of the Laboratory manager.
 - iii. If User brings its own chemicals into the Laboratory, User shall provide a complete list of the chemicals to NC State no later than one (1) week prior to the first date of use. All materials provided by User shall be accompanied by the appropriate environmental and safety information for those materials as required by law. User agrees to provide to the Laboratory Manager and the NC State Department of Environmental Health and Public Safety MSDS sheets and process information for the materials and processes that User proposes for the Laboratory.
 - iv. User understands that use of the Laboratory may involve exposure to potentially hazardous conditions, including, but not limited to chemical, mechanical, electrical, thermal and radiation hazards. User shall plan and perform work in the Laboratory in such a way so as to ensure User's personal safety as well as the safety of others in the Laboratory community. User shall at all times be responsible for User's personal safety. User shall operate all instruments and equipment in a safe and professional manner, consistent with the equipment operating instructions and the Laboratory policies. User represents that User's knowledge of general laboratory practice is advanced enough to permit its safe use of the Laboratory. NC State may decline to allow particular representatives of User to use the Laboratory for any reason.
- d. **Abandoned Property.** User shall bear the responsibility for and costs of disposal of all User provided materials remaining at the termination of the Laboratory usage. User shall arrange for disposal or removal of any remaining User provided materials. Additionally, User shall be responsible for the safe disposal of its chemicals at the conclusion of the last date of use. Any property left at the Laboratory shall, after a period of ten (10) days from the end of the last day of the scheduled use, be deemed abandoned and shall become property of NC State to be disposed of or utilized at NC State's sole discretion. User shall be responsible for any disposal costs incurred by NC State.
- e. **Obstructions.** All portions of the sidewalks, entries, doors, passages, vestibules, halls, corridors, stairways, passageways, and all ways of access to public utilities of the Laboratory must be kept unobstructed by User and must not be used by User for any purpose other than ingress to or egress from the Laboratory.
- f. **Reimbursement.** User shall be solely responsible for all damages to the Laboratory or the buildings, grounds and equipment of NC State arising out of its

use of the Laboratory, and shall promptly reimburse NC State the actual cost of repairing or replacing any such damaged property.

- g. **Modifications.** User shall not make modifications to the Laboratory or equipment. User further agrees that upon the end of each day's use, User will leave the Laboratory in the same condition as it was prior to any use made therein by User.
6. **Termination.** Either party may terminate this Agreement at any time by providing ten (10) days' written notice. All promises, requirements, terms, conditions, provisions, representations, guarantees, and warranties contained herein shall survive the expiration or termination date of this Agreement unless specifically provided otherwise herein, or unless superseded by applicable federal or state statutes of limitations.
7. **Release.** User releases and discharges NC State from any and all liabilities for any loss, injury or damages to person or property that may be sustained by reason of its use of the Laboratory under this Agreement.
8. **Indemnification.** User shall indemnify, defend and hold harmless NC State, its trustees, officers, agents, and employees, from any and all liabilities, suits, actions, claims, demands, damages, losses, expenses and costs of every kind and nature incurred, asserted or imposed against NC State by reason of any accident, injury (including death), or damage to any person or property howsoever caused, arising from or connected with User's use of the Laboratory. If User is a state or federal government agency, indemnification is not required where prohibited by law. This representation and warranty shall survive the termination or expiration of this Agreement.
9. **Insurance.**

 - a. At all times during its use of the Laboratory, User, at its sole cost and expense, shall purchase and maintain the following policies:

 - i. General liability insurance, covering the use contemplated by this Agreement, with combined single limits coverage for bodily injury and property damage of not less than \$1 million dollars per occurrence, \$3 million aggregate; and,
 - ii. Worker's compensation insurance, where required by North Carolina law; and,
 - iii. Such insurance as required from city, county, state or federal laws, codes or regulations.

- b. All insurance policies required to be purchased under this Agreement shall be issued by insurance companies with an A.M. Best rating of “A” or better, and shall be issued by companies qualified to do business in the State of North Carolina. Such insurance shall be issued in the name of User with NC State and the State of North Carolina named as additional insureds, using ISO Form CG 2026 or equivalent. User agrees that the insurance shall be primary coverage and shall contain no terms allowing the insurer to be subrogated to the rights of any injured or damaged person or entity insofar as said person or entity may have claims against NC State. The certificate of insurance shall contain a valid provision or endorsement that the policy may not be cancelled, terminated, changed, or modified without reasonable prior written notice to NC State. User shall provide to NC State each policy or certificate of insurance evidencing such policy issued on Accord Form 25 or equivalent, at least five (5) business days prior to the date of User’s first use of the Laboratory. NC State reserves the right to review, modify, reject, or accept any required policies of insurance, including limits, coverage, or endorsements, herein from time to time throughout the term of this Agreement. NC State reserves the right, but not the obligation, to review and reject any insurer providing coverage due to its poor financial condition or failure to operate legally.
10. **Intellectual Property.** User acknowledges that User is responsible for User’s research and that NC State neither warrants nor assures User’s project’s success. NC State makes no *a priori* claims to inventions developed in the Laboratory, but also makes no additional provisions, outside of NC State policies and procedures, to protect User’s intellectual property. User agrees not to provide its proprietary information to NC State staff or other Laboratory users; provided that NC State will consider entering into non-disclosure agreements, on a case-by-case basis, if NC State needs to know User’s proprietary information in order to make a determination as to whether or not the Laboratory can safely accommodate the proposed process or material.
11. **Assignment.** This Agreement is personal and User shall not assign this Agreement or any privileges granted hereunder, nor allow any other person, group or entity to use the Laboratory during User’s scheduled time(s) without the prior written consent of NC State.
12. **Marks and Logos.** User shall not use the logos, marks, or names of NC State, or imply NC State endorsement or support, without the prior written approval of an authorized NC State official.
13. **Relationship of the Parties.** An employee of NC State may not be a User or owner, shareholder, representative, agent, contractor or consultant of User unless the employee has updated his/her Conflict of Interest disclosure and filed a management plan including, but not limited to, ownership of any intellectual property which may be the subject of the laboratory research or may result from the research. If the Dean of the College with oversight of the laboratory space indicates consent and confirms

that the space is not required for NC State use, this Agreement may be forwarded to the Director of Materials Management for administration, provided the approvals described in Section 14 of this Agreement have been obtained.

14. **Administration and Approvals.** Laboratory Use Agreements are administered by the Office of Materials Management, which has signature authority for the agreements. However, because any laboratory use that is not for University purposes should be allowed only when that space is **not required** for University purposes and necessarily involves allocation of valuable research space, Materials Management will require the approval of the Office of Research Innovation and Economic Development prior to negotiating any Laboratory Use Agreement.

15. **Notices.** All notices shall be hand delivered, sent by private overnight mail service, or sent by registered or certified U.S. mail and addressed to the party to receive such notice at the address given below, or such other address as may hereafter be designated by notice in writing:

If to NC State: Director of Procurement and Business Services
 North Carolina State University
 Campus Box 7212
 Raleigh, NC 27695-7212

With a copy to: _____

If to User: _____

16. **Force Majeure.** Neither party shall be deemed to be in default of its obligations hereunder if and so long as it is prevented from performing such obligations by an act of war, epidemic, pandemic, public health emergency, hostile foreign action, nuclear explosion, earthquake, hurricane, tornado, or other catastrophic natural event or act of God.

17. **Entire Agreement.** This Agreement contains the entire agreement of the Parties and there are no representations, inducements or other provisions other than those expressed herein. All changes, additions or deletions to this Agreement shall be in writing and executed by the authorized representatives of both Parties.

18. **No Waiver.** The waiver by NC State of any agreement, condition, or provision contained in this Agreement will not be deemed a waiver of any subsequent breach or any other agreement, condition, or provision contained in this Agreement, nor will

any custom or practice that may develop between the Parties in the administration of the terms of this Agreement be construed to waive or lessen the right of NC State to insist upon User's performance in strict accordance with the terms of this Agreement.

19. **Governing Law.** This Agreement and the rights and obligations of the parties hereto shall be interpreted, construed and enforced in accordance with the laws of the State of North Carolina, and the exclusive venue for any legal proceedings arising from or incident to this Agreement shall be the state courts sitting in Wake County, North Carolina.
20. **Severability.** Should any provision of this Agreement be declared illegal, void, or unenforceable under North Carolina law, or shall be considered severable, the Agreement shall remain in force and be binding upon the parties hereto as though the said provision had never been included.
21. **Counterparts.** This Agreement may be executed in one or more counterparts, each of which will constitute an original, but all of which together will constitute one instrument.
22. **No Property Right.** Under no circumstances shall this Agreement be construed as granting to User any right, title or interest of any kind in the Laboratory or any property of NC State or the State of North Carolina.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, User and NC State have executed this Agreement as of the date of the last signature below as indicated by the signatures of their authorized representatives.

USER

By: _____
Name: _____
Title: _____
Date: _____

**NORTH CAROLINA STATE
UNIVERSITY**

By: _____
Name: _____
Title: _____
Date: _____

Acknowledged by:

Name: _____
Title: Dean or Associate Dean for Research
College of _____
Date: _____

Acknowledged by:

Name: _____
Title: Vice Chancellor for Research and
Innovation
Date: _____

EXHIBIT A

Statement of Work