

MONTANA STATE UNIVERSITY FACILITY USE AGREEMENT

This FACILITY USE AGREEMENT (“Agreement”) is entered into on this ____ day of ____, ____ (the “Effective Date”), between ____, a corporation organized under the laws of the State of ____, with its principal place of business located at ____, (“Client”) and Montana State University, a state institution of higher education located in Bozeman, Montana, (“University”).

RECITALS

WHEREAS, Client desires to use certain facilities, equipment and/or instruments which the University has the capability to provide; and

WHEREAS, such use is consistent and compatible with the University’s mission to support research, education, and public service.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, the parties agree as follows:

Definitions

- a. Facility(ies) – means the University location(s) identified in Attachment A
- b. Equipment/Instruments – means the University instruments, apparatus, or tools identified in Attachment A.
- c. Authorized Employees – means Client’s personnel listed in Attachment A who have been approved for access or use of the University Facility or Equipment/Instruments.
- d. Authorized Purpose – means the approved activities and scope of use described in Attachment A.
- e. Confidential Information – has the meaning set forth in Section 12.
- f. Data – means raw data, output files, images, measurements, or other information generated during Client’s use of the Facility or Equipment/Instruments.
- g. University Policies – means all applicable University and Board of Regents policies, rules and regulations.

1. Authorized Purpose

- a. Client shall access and use the Facility and Equipment/Instruments solely for the purpose described in **Attachment A**. Use for any other purpose is prohibited. Client shall not use the Facility or Equipment/Instruments in any manner that violates state or federal law, violates any University Policy, or infringes on the rights of others.

- b. Client shall not conduct any research requiring regulatory oversight on University property without appropriate University regulatory approval i.e. IRB, IACUC, IBC, or Chemical Safety.
- c. University personnel may, at University's sole discretion, provide limited operational assistance related to Equipment/Instruments. Such assistance shall not constitute consulting, analytical services, interpretation of results, or creation of deliverables, and does not guarantee any particular outcome.

2. Authorized Employees

- a. Access to the Facility and/or Equipment/Instruments shall be limited to the Authorized Employees listed in Attachment A. The parties agree to identify a point of contact in Attachment A in case of any concerns, questions, or emergencies.
- b. Authorized Employees must:
 - (i) complete all required University safety and training modules prior to access; and
 - (ii) adhere to all University Policies while on University property.
- c. The University may, at any time and in its sole discretion, revoke an Authorized Employee's access to the Facility and/or Equipment/Instruments if the University determines that the individual's conduct is unsafe or inconsistent with University Policy.
- d. If access requires a CatCard or any specialized UIT services or credentials, a **Non-Employee Appointment** form must be submitted for each Authorized Employee prior to access.

3. Scheduling and Oversight

- a. Client shall coordinate scheduling with the designated University representative to avoid conflicts in the use of the Facility or Equipment/Instruments. University research, teaching, and educational uses take precedence over Client use of the Facility or Equipment/Instruments.
- b. University may access the Facility and Equipment/Instruments at any time to inspect, perform maintenance, or ensure compliance with this Agreement.
- c. Client's activities shall be conducted under the supervision of the University Supervising Faculty/Staff identified in Attachment A.
- d. Client acknowledges that access may be restricted during University holidays, weather closures, maintenance periods, or other operational interruptions.

4. Access and Security

- a. Client Access is limited to the dates, times, and locations specified in Attachment A. Client and its Authorized Employees shall comply with all University security procedures, including any card access, escort or visitor registration requirements. Client shall not grant access to any individual not listed as an Authorized Employee without the

University's prior written approval. The University reserves the right to suspend or revoke access immediately for safety, security, or compliance reasons.

- b. All Client property brought to the Facility remains at Client's sole risk. University assumes no responsibility for the loss, theft, or damage to Client property. Client waives all rights of action of any sort for damage to or loss of any said property, however such damage or loss may arise, and from whatever manner or cause.
- c. If Client intends to connect their own devices, equipment or instruments to the University network, prior written approval must be obtained from University Information Technology Security at itsecurity@montana.edu. Any requests must include a description of what specific equipment, devices, or instruments will be connected to the University network and its requirements.
- d. Client shall not install software, run scripts, or alter configurations on University Equipment/Instruments. Client shall not attempt to bypass any University security or data security controls. University does not guarantee data security, network uptime, or protection from data loss.

5. Prohibited Activities

Client and Authorized Employees shall not:

- a. Use the Facility or Equipment/Instruments for purposes not expressly authorized in this Agreement.
- b. Violate any University Policies or state or federal laws.
- c. Bring controlled substances or hazardous materials onto University property unless approved in advance by the University.
- d. Engage in any unsafe, disruptive, or unlawful conduct, including harassment or actions that endanger persons or property.
- e. Photograph, record, or otherwise capture images of University personnel, students, research data, or proprietary materials without written authorization.
- f. Permit any third party to access or use the Facility or Equipment/Instruments without prior written consent of the University.
- g. Bring or use any materials prohibited by University policy, radioactive materials, human subject materials, infectious agents (BSL-2 or higher), or materials requiring special licensing unless expressly approved in advance by the University in writing.

6. Fees and Compensation

- a. Client shall pay University [**dollar amount**] (\$00.00) for the use described herein, according to the following payment schedule:
- b. All payments shall be made payable to MONTANA STATE UNIVERSITY at the following address:

Department or Service Center Name

Address
Montana State University
Bozeman, MT **zip code**

- c. Additional fees or costs may apply in the event Client damages the Facility, Equipment/Instruments, or University property, as specified in Section 8.

7. Term and Termination

- a. The term shall commence on _____ and continue **[for X days/years, etc.]** (the “Term”), unless terminated earlier as provided herein.
- b. Either Party may terminate this Agreement upon thirty (30) days written notice to the other Party. Upon termination, University shall be compensated for all costs and expenses incurred through the termination date and for any uncancellable commitments.
- c. Upon termination or expiration, Client shall immediately cease all activities, vacate the Facility, and return all University property.

8. Liability and Indemnification

- a. Client shall reimburse University for any damage, clean-up, or waste disposal costs arising from its use of the Facility or Equipment/Instruments, including but not limited to disposal, shipping, damages, equipment repair and/or replacement, and all other costs and penalties.
- b. Upon expiration or termination of this Agreement, Client shall restore the Facility to its prior condition, ordinary wear and tear excepted, and remove all personal property and materials.
- c. Client hereby agrees to save, defend, indemnify and hold harmless the State of Montana, Montana State University, its elected and appointed officials, agents, and employees and assigns (the “Indemnified Parties”) from and against any and all claims, liabilities, demands, causes of action and judgements, of any kind or character, including reasonable legal expenses and attorneys’ fees to which any of the Indemnified Parties may become subject as a result of: i) any third party claim, demand, action or proceeding that use of any of the materials provided or created by Client infringes or violates any patent, copyright, trademark or other intellectual property rights of any third party; ii) any injuries (including death) or property damage suffered by any person as a result of a defect in any product tested or created under this Agreement or from Client’s use or possession of the results or materials produced hereunder; and iii) any negligent act or omission, or willful misconduct, of Client.

9. Use of Hazardous Material and Safety Compliance

- a. Client shall provide applicable Safety Data Sheets, label materials properly, and transport material in accordance with University policies and procedures.

- b. Client shall comply with all applicable University Environmental, Health, Safety and Risk Management, Biosafety, Radiation Safety, and Chemical Hygiene requirements, policies, procedures, and guidelines. University reserves the right to require safety plans or protocols prior to granting access.
- c. Client shall bear all costs and risks of transporting materials to and from the Facility and shall remove all unused materials upon termination of this Agreement.
- d. Client agrees to comply with all applicable DOT, OSHA, EPA, IATA, NIH, and other regulatory requirements governing the packaging, handling, shipment, or disposal of materials.

10. Insurance

- a. Client shall, at its sole cost, obtain and maintain commercial general liability insurance at all times during the Term. Such insurance shall have a minimum combined single limit of liability of at least One Million Dollars (\$1,000,000) per occurrence and a general aggregate limit of at least Two Million Dollars (\$2,000,000). Such policy shall be written to be occurrence coverage and apply to all bodily injury, property damage, and personal injury losses, and shall be endorsed to include the “The State of Montana and Montana State University” as additional insured on the policy. Such liability insurance shall be written as a primary policy, not excess or contributing with or secondary to any other insurance as may be available to University. Client shall name University as an additional insured. The University reserves the right to require other types of coverages and limits, depending upon the nature of the use.
- b. Client shall also maintain worker’s compensation coverage as required by law for all employees performing work at the Facility.
- c. Certificates of insurance shall be provided to the University at the time of entering into this Agreement and upon any renewal of policies.
- d. All Insurers shall have an AM Best rating of A- or better and be licensed and admitted in the state of Montana.
- e. University may suspend access to the Facility or Equipment/Instruments until evidence of required insurance is received.

11. Publicity

- a. Client will not include the name of University or any of its employees in any advertising, sales promotion or other publicity matter without prior written approval of same. University does not endorse any product or service. Reports provided by University under a Facility Use Agreement may be published by Client. However, the published data or report shall include the following statement:

“This information was provided under a Montana State University Facility Use Agreement and is not intended to endorse or recommend any product or service.”

- b. University will not include the name of Client or any of its employees in any advertising, sales promotion or other publicity matter without prior written approval of same.
- c. For non-proprietary work completed under this Agreement, Client shall acknowledge the Facility in any manuscripts published in peer-reviewed journals, poster presentations, or at conferences.

12. Miscellaneous Terms

- a. **Waiver of Consequential Damages** Unless required by law, in no event shall University be liable for any direct, incidental, or consequential damages, including without limitation lost profits, lost business, lost data, or lost goodwill, regardless of cause or theory of liability, and regardless of whether University was advised or had reason to know of the possibility of incurring such damages in advance.
- b. **No Warranties; Limitation of Liability** UNIVERSITY PROVIDES THE FACILITY, EQUIPMENT/INSTRUMENT, AND SERVICES “AS IS” WITHOUT WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED. WITHOUT LIMITING THE FOREGOING, THE UNIVERSITY EXPRESSLY DISCLAIMS ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT. THE UNIVERSITY DOES NOT WARRANT THAT THE AUTHORIZED PURPOSE, OR THE UNIVERSITY FACILITIES, EQUIPMENT, OR ANY SUPPORT SERVICES MADE AVAILABLE IN FURTHERANCE THEREOF, WILL MEET CLIENT’S REQUIREMENTS OR THAT ANY PARTICULAR RESULT WILL BE ACHIEVED. UNIVERSITY’S AGGREGATE LIABILITY FOR ALL DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER IN CONTRACT OR TORT, OR OTHERWISE, SHALL BE LIMITED TO THE TOTAL AMOUNTS ACTUALLY RECEIVED FROM CLIENT AS COMPENSATION UNDER THIS AGREEMENT WITHIN THE TWELVE (12) MONTHS IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO LIABILITY; HOWEVER, IN NO EVENT SHALL UNIVERSITY’S LIABILITY EXCEED ANY LIMIT PROVIDED UNDER APPLICABLE MONTANA LAW.
- c. **Force Majeure** University shall not be liable for any failure to perform as required by this Agreement, to the extent such failure to perform is caused by any reason beyond the University’s control, or by reason of any of the following: labor disturbances or disputes of any kind, accidents, failure of any required governmental approval, government regulations or court orders, civil disorders, acts of aggression, acts of God, energy or other conservation measures, failures of utilities, mechanical breakdowns, material shortages, disease, epidemic, pandemic, or government or public health directives and regulations, or other dangers to public health, or similar occurrences.
- d. **Applicable Law; Venue; Immunity** Any dispute regarding or arising under this Agreement shall be subject to and resolved in accordance with the laws of the State of

Montana, without regard to its conflict of law principles. Any legal action or proceeding arising out of or relating to this Agreement shall be brought exclusively in a court of competent jurisdiction located in Gallatin County, Montana, and each party hereto irrevocably consents to the jurisdiction and venue of such courts for all actions or proceedings. Nothing in this Agreement shall be construed as a waiver by the State of Montana or Montana State University of any immunities, defenses, limitations of liability, or other protections provided under Montana law.

- e. **Confidential Information** By virtue of this Agreement, the Parties may gain access to information that is confidential to one another (“Confidential Information”). The Parties agree to disclose only information that is required for the performance of obligations under this Agreement, though Client may also become privy to University Confidential Information, incidental to the performance of the Agreement. A disclosing Party’s Confidential Information shall not include information that: (i) was in the other Party’s lawful possession prior to the disclosure; (ii) is independently developed by employees of the other Party without use or reference to the disclosing Party’s confidential information; (iii) is or becomes publicly available (with no obligation of confidentiality) through no act or omission of the other Party; or (iv) is made known to a Party by a third party who has a legal right to do so. Except as otherwise required by law, court order, or subpoena, for a period of one (3) years following the end date or termination date of this Agreement, the Parties agree to take reasonable steps to prevent disclosure of the Confidential Information of the other Party.
- f. **Intellectual Property**. Each party retains ownership of any intellectual property created prior to this Agreement. Nothing in this Agreement shall be construed as a license to the other Party of any intellectual property right. In the event that new intellectual property is created during the term of this Agreement, ownership of such intellectual property shall follow inventorship or authorship. Intellectual property created solely by Client shall be owned by Client. Intellectual property created solely by University personnel shall be owned by University. Intellectual property created by both Client and University personnel shall be jointly owned, and the Parties shall negotiate in good faith the management and disposition of such intellectual property.
- g. **Export Control**. The Parties agree to comply with all applicable federal, state, and local laws and regulations governing performance hereunder, including, but not limited to, US export controls. To the extent that the Authorized Purpose implicates US export controls compliance obligations, the Parties agree to reasonably cooperate to ensure mutual compliance; however, as a non-delegable duty, each Party shall remain solely responsible for their compliance with any applicable export controls.

Entire Agreement.

- a. This Agreement constitutes the entire understanding between the Parties and supersedes all prior negotiations or communications.

- b.** Nothing in this Agreement shall be construed to create an employer-employee relationship between the University and any Authorized Employee of Client.
- c.** Sections concerning indemnification, confidentiality, intellectual property, limitation of liability, and governing law shall survive expiration or termination of this Agreement.

The parties hereto have caused this Facility Use Agreement to be executed as of the date set forth herein by their duly authorized representatives.

CLIENT

Signature:

Signatory Name

Title

Date:

MONTANA STATE UNIVERSITY

Signature:

Kirk Lubick

Associate VP for Research Integrity and
Compliance

Date:

ATTACHMENT A

1. Client is authorized to access and to use the University Facilities and Equipment/Instruments identified below solely for the following purposes:

2. Client is authorized to access the below identified Facility and/or Equipment/Instruments:
 - a.
 - b.
 - c.
 - d.
 - e.
 - f.

3. The following individuals are Authorized Employees:
 - a.
 - b.
 - c.
 - d.
 - e.

4. Points of Contact:
 - a. Client point of contact:
 - i. Name:
 - ii. Title:
 - iii. Email:
 - iv. Phone:
 - b. University Supervising Faculty/Staff:
 - i. Name:
 - ii. Title:
 - iii. Email:
 - iv. Phone: