

STANDARD UNM FACILITIES USE AGREEMENT

This Use Agreement (“Agreement”) is made and entered into this ___ day of _____, 20___ (“Effective Date”), by and between The Regents of the University of New Mexico (“University”), a New Mexico state institution of higher education, and _____ (“Licensee”), a _____ corporation.

Background

- A. As part of an effort to develop certain confidential and proprietary technologies, Licensee has need of laboratory facilities and certain specialized equipment.
- B. The University owns and operates such laboratory facilities and equipment at its _____ in Albuquerque, New Mexico. Those facilities are accessible to and are used by students, faculty and other employees of the University, and the University also licenses access to the Facilities to third parties.
- C. The University desires to license to Licensee, and Licensee desires to license from the University, the facilities and equipment, subject to the terms and conditions of this Agreement.

Agreement

- 1. **Facilities.** Subject to the terms and conditions of this Agreement, the University hereby licenses the laboratory facility described on Exhibit A (“Laboratory”) and the equipment listed on Exhibit B (“Equipment”) to Licensee. The Laboratory and Equipment when referred to collectively in this Agreement will be referred to as the “Facilities.”
- 2. **Term.** The Term of this Agreement will be for ninety (90) days, renewable indefinitely. This Agreement shall be deemed to be renewed for an additional ninety (90) day term unless either party provides written notice of nonrenewal prior to the end of the precedent term, pursuant to Section 20.
- 3. **Compensation.**
 - a. In consideration for its use of the Facilities and for the University’s compliance with the other terms and conditions of this Agreement, Licensee will pay the University’s standard published rates for use of the Facilities, located _____. The University reserves the right to change

its standard rates upon one month's written notice to Licensee, but not to be effective for Licensee before six months after the Commencement Date.

- b. UNM's current rates, as applied to the Facilities, are as follows:

[Fill in rate schedule; must be approved by UNM Controller]

- c. Licensee will pay Compensation on or before the 15th day of the month for its use of the Facilities during that month; provided however, that on the Commencement Date, Licensee shall pay the University the sum of \$_____, representing the parties' estimate of Licensee's last month's Compensation (the "Final Compensation Payment"). Unless otherwise agreed by the parties, the Final Compensation Payment shall be applied to payment of the Compensation applicable to the last month of the term of this Agreement and any remainder shall be refunded promptly to Licensee.

4. **Title and Condition of Facilities.** The University represents that it is the sole owner of the Facilities and that upon the Commencement Date, Licensee will have the right to use the Facilities for the duration of this Agreement free from unreasonable interference by any person claiming by, through, or under the University, subject to the terms and conditions of this Agreement.

5. **Licensee's Access to and Use of the Facilities.**

- a. *Licensee's Access to the Facilities.* Up to _____ () individuals designated by Licensee ("Licensee Team") will have non-exclusive access to and use of the Facilities (except as provided in Section 8) for twenty-four (24) hours a day, seven (7) days a week, except for University-observed holidays. The University will provide, at no additional cost to Licensee, the following items or services reasonably necessary to allow the Licensee Team access to the Facilities as described above: keys, identification cards, parking.
- b. *Licensee's Use of the Facilities.* Licensee will use the Facilities for development of certain of its proprietary technologies, subject to the terms and conditions of this Agreement. Licensee agrees to use the Facilities in accordance with the written procedures established by the University for the operation of the Facilities including safety and operations training to be provided by the University (collectively, "Operating Procedures"). Ultimate responsibility for safe use of the Facilities rests with the users. On or before the Commencement Date, the University will deliver a copy of the Operating Procedures, or otherwise make a copy thereof available at the Facilities, to Licensee.

- c. *Chemicals and Other Hazardous Materials.* Licensee shall not bring onto the facility any chemicals or other hazardous materials without first obtaining the written consent of the manager of the facility ("Facility Manager"). Licensee shall disclose to the Facility Manager in writing all such chemicals and other hazardous materials brought onto the facility, including amounts, dates, and disposition. Licensee agrees to abide by the University's policies on the storage and handling of all hazardous materials.
- d. *Onsite Storage.* Licensee will be allowed to install within the Laboratory a safe or other secure storage unit ("Storage Unit"), provided it is clearly labeled as the property of Licensee. Licensee will be allowed to store work in progress and other materials therein, subject to the provisions of this Agreement. Licensee will retain ownership of the Storage Unit and all materials stored therein. The University will have a right of access and examination in the presence of Licensee to verify compliance with this Agreement, University policy, and state and federal law. Upon termination of this Agreement, Licensee will, at its sole cost and expense, remove the Storage Unit and restore that portion of the Laboratory affected thereby to its condition prior to installation of the Storage Unit, reasonable wear and tear excepted. Licensee agrees that the University shall not be responsible for damage to the Storage Unit or the contents thereof. Licensee agrees to store its confidential or proprietary information and materials in the Storage Unit, or remove such information and materials from the Facilities, when Licensee employees or representatives are not present at the Facilities.
- e. *Consumables.* Licensee, at its sole expense, will provide all consumables necessary for its use of the Facilities. Licensee agrees that the University shall not be responsible for loss or damage to consumables brought on to the premises by Licensee.
6. **Access to and Use of the Facilities by University and Third Parties.** Except as provided in Sections 8 and 10 below, nothing in this Agreement will limit the access to and use of the Facilities typically afforded by the University to its students, faculty and other employees or to third parties.
7. **No Participation by University Personnel.** No University personnel will participate or be involved in Licensee's work at the Facilities, except to the extent of their responsibilities for routine cleaning, maintenance and repair of the Facilities, for the benefit of the University. Licensee personnel shall not seek technical advice from the University concerning the development of Licensee's proprietary technologies.
8. **Coordination and Scheduling of Use of the Facilities.** The University shall be responsible for coordinating the use of the Facilities by Licensee and other users. The University will exercise prompt and reasonable efforts to coordinate use of the

Facilities as available. The Licensee may submit a request for scheduled time of the Facilities within a maximum of _____ hours per calendar month. The University will notify Licensee of the approved scheduled times. The University reserves the right to use the Facilities and allow others to use the Facilities during the times they are in use by Licensee. Special arrangements may be made for time-limited exclusive use of specific equipment and tools. During Licensee's scheduled times, the University will use reasonable efforts to schedule use of the Facilities or portions thereof by others in accordance with established University scheduling procedures in a manner that will not unreasonably impede Licensee's access to the Facilities and reserved tools and equipment, nor would exclude Licensee from using the Facilities as permitted by this Agreement, reasonable maintenance and repairs excepted.

9. **Ownership of Proprietary Technology.** The University acknowledges and agrees that it will have no ownership or any other interest in any inventions, know-how, samples, improvements, methods, data, concepts or other information or technologies developed by Licensee during its use of the Facilities or otherwise ("Proprietary Technology") solely because of Licensee's use of the Facilities.

10. **Confidentiality.**

- a. In the performance of this Agreement, both parties may find it necessary to disclose information which the disclosing party deems to be proprietary and confidential. All such information shall be reduced to writing and marked "Confidential" and, if disclosed orally, shall be reduced to writing and marked "Confidential" within thirty (30) days of oral disclosure.

Except as otherwise provided in this Agreement, for a period of three (3) years after the date of such disclosure, University and Licensee personnel shall maintain the confidentiality of such information and shall use it solely for the purposes of this Agreement, except:

- (1) information which is or becomes publicly known through no fault of receiving party;
- (2) information learned other than through performance of this Agreement;
- (3) information which is published in the necessary course of the prosecution of patent applications based upon inventions developed under this Agreement;
- (4) information reasonably necessary to protect University's interests in a lawsuit, alternative dispute resolution process, or government investigation;

- (5) information reasonably necessary to process insurance claims;
 - (6) information reasonably necessary to protect University's safety interests;
 - (7) to the extent required by law.
- b. Both parties shall use the same degree of care as they use to protect their own proprietary information to prevent the inadvertent, accidental, unauthorized or mistaken disclosure or use by their employees of confidential information disclosed by disclosing party.
11. **Maintenance and Repair.** The University will make reasonable efforts to maintain the Facilities. If any Equipment becomes partially or completely dysfunctional, or if the Laboratory or Equipment falls below the University's standard for laboratories and equipment of the class and nature involved herein, then the University will repair the Equipment or otherwise remedy the problem within a reasonable time assuming that such repairs and maintenance are consistent with the University's maintenance plan and budget for the given laboratory or equipment. If the dysfunction (reasonable wear and tear excepted) requiring repair results primarily from Licensee's failure to use the Equipment in accordance with applicable Operating Procedures, then Licensee shall repair or cause the repair of the Equipment at Licensee's own expense. Licensee's sole remedy for breach by University of this paragraph shall be termination of this Agreement, with a refund by University to Licensee of any prepaid but unused portion of the Compensation.
12. **Licensee's Equipment.** Subject to compliance with the University's policies and state and federal law, including University's policies for the storage and handling of hazardous materials and its published safety regulations, Licensee may use or place within the Laboratory any equipment or personal property used by Licensee in the performance of its work at the Facilities, provided that such equipment or personal property does not interfere with use of the Facilities by others, and subject to the prior written approval of the Facilities Manager. Such equipment and personal property will at all times remain the property of Licensee, and shall be marked as such. The University will not be responsible for loss or damage to Licensee's equipment or personal property at the Facilities.
13. **Compliance with Law.** The University will comply with and cause the Facilities to comply with: (a) all legal requirements applicable to the Facilities or the use thereof and (b) all terms, conditions, covenants, agreements and requirements of insurance policies which may be in force with respect to the Facilities. Licensee will comply with all legal requirements applicable to its use of the Facilities.

14. **Utilities.** The University will pay the cost of all utilities associated with the Facilities, including but not limited to water, natural gas, electricity and telephone.
15. **Taxes.** Licensee will pay all taxes levied on or associated with personal property and equipment owned by Licensee and kept in the Laboratory. If Governmental Gross Receipts Taxes are applicable to this Agreement, Licensee will be responsible for these taxes in addition to the Compensation agreed to above.
16. **WAIVER OF WARRANTIES.** UNIVERSITY DOES NOT WARRANTY OR GUARANTEE THE RESULTS OF LICENSEE'S USE OF THE FACILITIES OR ANY OF THE EQUIPMENT MADE AVAILABLE PURSUANT TO THIS AGREEMENT, ANY COMMUNICATIONS, PAST OR FUTURE, FROM UNIVERSITY'S EMPLOYEES TO THE CONTRARY NOTWITHSTANDING.
17. **Indemnification of University By Licensee; University's Liabilities for Third Party Claims.** Licensee will indemnify and hold the University harmless from and against all claims, liabilities, actions, losses, damages and costs arising from or relating to (1) a breach of any warranty made by Licensee herein, or (2) the use of the Facilities by Licensee, its agents, employees or assigns; provided, however, that Licensee will not be required to indemnify or hold the University harmless from or against any portion of any Claim to the extent attributable to the negligent act or omission of the University or its agents. Notwithstanding anything to the contrary in this Agreement, the University's liability hereunder shall be limited to the amounts and by the immunities of the New Mexico Tort Claims Act, Section 41-4-1 et seq. NMSA 1978.
18. **Insurance.** Licensee will maintain and provide a copy of its current level of insurance coverage with respect to (a) Worker's Compensation and (b) Comprehensive General Liability Insurance, and will provide the University with at least thirty (30) days' advance notice of any change thereto. Licensee will maintain such coverage in an amount not less than the limits of the New Mexico Tort Claims Act, which currently total \$1,050,000.
19. **Damage and Destruction.** If any part of the Facilities are damaged or are rendered partially or wholly inaccessible to Licensee due to fire or other casualty, and such damage or other casualty is not remedied within seven (7) working days, Licensee may, at its option, terminate this Agreement and receive a refund of any prepaid but unused portion of the Compensation. Licensee will be responsible for the removal of its equipment and personal property.

20. Termination.

a. Termination by the University.

- (1) Termination by the University without Cause. The University may terminate this Agreement without cause upon thirty (30) calendar days' written notice to Licensee, except not within the first sixty (60) days of this Agreement.
- (2) Termination by the University for Cause. The University may terminate this Agreement by written notice to Licensee (effective three business days after mailing) for any Licensee Default (as defined in Section 20 herein).

b. Termination by Licensee.

- (1) Termination by Licensee without Cause. Licensee may terminate this Agreement without cause upon five (5) calendar days' written notice to the University.
- (2) University's Liability. The University's liability for default shall be limited to a refund to Licensee of any payments made by it under this Agreement for access at times in which the University was in default. The University shall in no event be liable for special, incidental, or consequential damages.

c. Obligation to Pay Compensation. Upon termination of this Agreement, Licensee will no longer be obligated to pay Compensation for any period following the effective date of such termination, and shall receive a refund for any prepaid but unused portions of the Compensation.

21. Default by Licensee. The occurrence of any one of the following events will constitute a default by Licensee under this Agreement ("Licensee Default"):

- a. Failure to Pay Compensation. Licensee fails to pay any Compensation within ten (10) days after it is due, and such failure continues for five (5) days after the University has given Licensee written notice specifying the amount due.
- b. Failure to Perform Other Covenants. Licensee fails to perform any of its covenants (other than payment of Compensation) under this Agreement. Before declaring Licensee in default, University shall first give Licensee written notice specifying the default, and shall give Licensee 15 days to cure the default. If the default cannot be cured in 15 days, Licensee shall within the 15 days begin a good faith effort to cure the default, and shall complete the cure diligently.

27. **Mediation.** Any controversy or claim arising out of or relating to this Agreement, or the breach thereof, shall be first mediated in Albuquerque, New Mexico, by a mediator mutually agreeable to the parties. If the parties cannot agree on a mediator, the parties shall each select one mediator. The two selected mediators will then select a third mediator. The third mediator shall mediate the dispute.
28. **Arbitration.** If the mediation described in Section 26 does not resolve the controversy or claim arising out of or relating to this Agreement, or the breach thereof, the parties shall submit such controversy or claim to binding arbitration in Albuquerque, New Mexico, in accordance with the rules of the American Arbitration Association.
29. **Interpretation and Construction.** This Agreement will be interpreted and construed only by the contents hereof. The parties hereto have both been represented by counsel in negotiating and drafting this Agreement, and consequently this Agreement shall not be construed in favor of one party or the other.
30. **Remedies not Exclusive.** The rights and remedies contained in this Agreement are not exclusive of any other rights or remedies the parties may have but will be construed as cumulative and will be in addition to every other remedy now or hereafter existing at law, in equity or by statute.
31. **Successors and Assigns.** All of the rights and obligations of the parties under this Agreement will bind, and the benefits will inure to, their respective legal representatives.
32. **Counterparts.** This Agreement may be executed in counterparts, all of which will be considered one and the same Agreement.
33. **Exhibits.** The exhibits identified in this Agreement and attached hereto are incorporated herein by reference and made a part hereof.
34. **Entire Agreement; Amendments; Waivers.** This Agreement contains the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior agreements, negotiations, representations, warranties, commitments offers, contracts and writings with respect to that subject matter. No modification or amendment of any provision of this Agreement will be effective unless made in writing and signed by both parties. No amendment, change, waiver or discharge hereof will be valid unless in writing and signed by both parties.
35. **Survival.** The obligations contained in this Agreement, except for those specifically discharged at or before termination, shall continue past termination and shall remain in effect until fulfilled.; provided however, the covenant set forth in Section 10(a)

prohibiting disclosure of trade secret or proprietary information shall expire five (5) years from the Commencement Date.

IN WITNESS WHEREOF, this Agreement has been executed as of the date first written above.

THE UNIVERSITY:

LICENSEE:

THE REGENTS OF THE
UNIVERSITY OF NEW MEXICO

LICENSEE

By: _____

By: _____

Title: _____

Title: _____

EXHIBIT A
THE LABORATORY

EXHIBIT B
THE EQUIPMENT