**Research Laboratory Facilities and Equipment Use Agreement**

**The University of Montana and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

This Agreement is made this 1st day of October, 2018 ("Effective Date"), between the University of Montana, a state public institution of higher learning having a place of business at 32 Campus Drive, Missoula, MT 59812 ("UM"), and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, located at \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, ("USER"), regarding the use of UM laboratory facilities and equipment ("Facilities and Equipment"). UM and USER agree as follows:

**1. Description of Availability for Use.** USER may use Facilities and Equipment during the times, on the conditions, and for the fees set forth on the attached UM Laboratory Facilities and Equipment Schedule and Rates, which is made part of, and incorporated as Schedule 1 to this Agreement. UM reserves the right to modify Schedule 1 on thirty (30) days' notice to USER**.**

**2. Rent.** The rent is set forth on Schedule 1.Total rent due hereunder shall be payable in full in conjunction with the execution of this lease to the following address:

The University of Montana

Vice President for Operations and Finance

University Hall 129

32 Campus Drive

Missoula, MT 59812

All rent checks shall be made payable to “The University of Montana.” All balances past due by more than 30 days shall accrue annual interest of 7% until fully satisfied.

**3. Persons Authorized by USER to Use Facilities and Equipment.** USER acknowledges use of Facilities and Equipment may require specialized training, skills, or knowledge and certifies and agrees any of User's authorized personnel shall have the requisite experience to properly use Facilities and Equipment.

a. USER agrees to furnish UM, upon execution of this Agreement, a list of USER's personnel authorized to user Facilities and Equipment on USER's behalf, which shall be attached hereto as Schedule 2. Persons Authorized by USER to Use Facilities and Equipment, and incorporated by this reference.

b. USER understands that persons not on such list will not be permitted to use Facilities and Equipment unless USER provides written authorization and an updated list reflecting USER's authorization of such person(s).

c. USER shall ensure that all persons authorized to use Facilities and Equipment shall have reviewed the applicable Laboratory Safety Manual and follow all rules and directions from UM personnel regarding use of Facilities and Equipment.

**4. Term and Termination.** The term of this Agreement is a period of one (1) year from the effective date with the exceptions that:

a. Either party shall have the right to terminate this Agreement on thirty (30) days' written notice to the other; and

b. UM shall have the right to immediately terminate the Agreement and suspend USER's use of Facilities and Equipment in the event that:

i. USER is in Default as defined in Paragraph 11 below; or

ii. USER fails to comply with any of the conditions or rules contained in the applicable Laboratory Safety Manual or fails to follow all rules and directions from UM personnel regarding use of Facilities and Equipment. Such determination shall be in UM's sole discretion.

**5. Care and Maintenance of Facilities and Equipment.** USER agrees as follows**:**

a. To conform to all reasonable rules or regulations UM may establish regarding the Facilities and Equipment, including but not limited to UM Policy #1007: Facility Use and Access. See <http://www.umt.edu/policies/> for a complete list.

b. Not to use Facilities and Equipment in any manner contrary to the laws and regulations of the United States of America or any agency thereof, including but not limited to U.S. Department of Commerce Export Administration Regulations, the U.S. Department of State International Traffic in Arms Regulations, and the U.S. Department of Defense Industrial Security Manual for Safeguarding Classified Information.

c. Not to damage any part of the Facilities and Equipment.

d. Not to permit any trade or occupation which is unlawful or any activity which would adversely affect UM.

e. USER shall not be entitled to place a sign on the interior or exterior of the building with USER's name.

f. Not to permit any employee, agent, customer or visitor of USER to violate any obligation of USER under this Agreement.

**6. Indemnification by USER; Liability Insurance.**

a. USER will hold harmless and indemnify UM and its officers, agents and employees against all claims, demands, actions, liability, loss, damage, out-of-pocket costs and expenses (including reasonable attorneys' fees) for injury, death, disability or illness of any person, or damage to property, occurring in the Facilities or arising out of the use, condition or occupancy of the Facilities and Equipment by USER or visitor of USER, or any of its or their agents, contractors, employees or visitors, except to the extent caused by the negligence or willful misconduct of UM or someone acting on UM's behalf. USER’s obligation to indemnify UM shall survive the expiration or termination of the Agreement.

b. USER shall, during the term of this Agreement, maintain comprehensive general liability insurance, issued by a reputable insurance company, licensed to transact business in the State of Montana, with combined single limits for bodily injury, death and personal property damage of $1,000,000 per occurrence and $2,000,000 aggregate per year, which insurance shall protect UM and USER against liability for any accident, injury or damage to the Facilities and Equipment. Upon signing of Agreement, USER has 30 days to show proof of insurance or USER will be considered to be in default.

c. For all insurance required to be maintained under this Agreement, USER shall send to UM a policy endorsement evidencing said coverage and listing UM as an “additional insured” party. Each insurance policy shall contain an agreement that the policy shall not be canceled without ten (10) days prior written notice to UM.

d. USER agrees to maintain, at USER’s own expense, property damage insurance (fire, etc.) in sufficient amounts to cover personal property owned by the USER located on the Facilities described in this Agreement. USER agrees to hold UM harmless for all claims for loss, damage, cost or expense including lost business income in connection with such property resulting from fire, casualty or other occurrence.

**7. Limitation on Warranties.** UM hereby expressly disclaims and excludes all Facilities and Equipment warranties. UM does not guarantee the accuracy of any test results USER may obtain from using Facilities and Equipment.

**8. USER Alterations, Installations, And Changes In Facilities.**

a. If USER desires to have installed in the Facilities any special facilities or equipment requiring other than normal electric service (including three-phase electric) for ordinary lighting, laboratory equipment, customary computers and other electronics, and minor electric appliances, UM will, if reasonably possible, furnish such additional special facilities or equipment provided that USER will pay UM in advance for the cost of providing and installing any additional wiring, equipment, meters and safety devices, and the cost of any repairs, alterations, additions to, and refinishing of the Facilities or Building so necessitated, and provided USER shall pay all additional utility charges incurred by use of said special facilities or equipment.

b. All alterations made or installed on the Facilities by USER shall be the property of UM and shall be surrendered with the Facilities at the end of this Agreement without compensation to USER. If, at the termination of this Agreement, UM directs by written notice to USER, USER shall, at its own expense promptly remove any alterations designated by UM and repair any damage to the Facilities caused by the removal.

c. USER agrees to promptly pay all sums due and payable by USER for any labor or services performed or materials supplied to the Facilities which have been requested by USER. USER shall indemnify and hold UM harmless from any and all claims, liens or costs (including attorney’s fees) which arise from USER’s alterations.

d. UM shall not be liable to USER in damages or otherwise for failure to perform any of the covenants on its part under this paragraph, nor shall temporary stoppages, temporary failures or interruptions of any of the services to be supplied by UM unto USER under this paragraph be construed as an eviction of USER, work an abatement of rent, or relieve USER from any covenant or agreement, but UM agrees diligently to restore any services obliged to be provided by it hereunder when temporary failures, stoppages, or interruptions occur.

**9. SECURITY**.UM agrees to provide such security as UM deems necessary or desirable, but UM shall no way be liable for any theft or other loss of property occurring in or about the Facilities and Equipment. The USER may, at its expense, enhance security for its Facilities, provided that UM retains the ability to access the Facilities.

**10. Success or Failure of USER’s Business**. USER specifically recognizes and acknowledges that the business venture to be undertaken by USER under this Agreement depends upon the ability of USER as an independent business person, as well as other factors, such as market and economic conditions beyond the control of UM and USER. USER acknowledges that success or failure of USER’s business enterprise will be dependent on the business acumen and diligence of USER. USER agrees that the success or failure of USER’s business will not depend on UM’s performance under this Agreement, and UM makes no representations or warranties as to the likelihood of success of USER’s business.

**11. USER Default**. Any one or more of the following events shall be a default under this Agreement:

a. USER fails to pay on the due date any rent or additional obligation provided for in this Agreement;

b. USER’s material failure to observe or perform any other promise or obligation of this Agreement;

c. After three business days’ written notice from UM, USER fails to immediately cure any hazardous condition which USER has created; or

d. USER abandons the Facilities and Equipment.

**12. General Provisions**.

a. **Assignment**. USER may not assign any rights or obligation of this Agreement. Any assignment attempted in violation of this Agreement shall be void.

b. **Force Majeure**. UM shall not be responsible for delays or failure to provide access to the Facilities and Equipment due to acts of God, strikes or other disturbances, war, insurrection, embargos, governmental restrictions, acts of governments or governmental authorities, or other causes of any kind beyond the control of UM.

c. **Governing Law**. This Agreement shall be governed by the laws of Montana.

d. **Entire Agreement**. This Agreement (including all attached or referenced schedules) is intended by the parties as the final and binding expression of their agreement and as the complete and exclusive statement of its terms. The Agreement cancels, supersedes and revokes all prior negotiation, representation and agreement between the parties, whether oral or written, relating to the subject matter of this Agreement. The terms and conditions of any purchase order or similar document submitted by USER in connection with the services provided under this Agreement shall not be binding upon UM.

e. **Severability**. If any provision of this Agreement is declared void or unenforceable, such provision shall be deemed severed from this Agreement, which shall otherwise remain in full force and effect.

f. **Notices.** All notices, requests and other communications that a party is required or elects to deliver shall be in writing and shall be delivered by facsimilie or electronic mail, or by a recognized overnight courier service, or by United States mail, first-class, certified or registered, postage paid, return receipt requested, to the other party at the address set forth below or to such other address as such party may designate by notice given pursuant to this section.

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| --- | --- |
| If to UM: | If to USER: |
| Director of Technology Transfer | By: |
| Office of Research and Creative Scholarship | Name: |
| The University of Montana | Address: |
| Missoula, MT 59812 | Address: |
| Claudia.eccles@umontana.edu | E-mail: |
|  |  |

IN WITNESS WHEREOF, UM and USER have executed this Agreement on the day and year first written above.

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| **THE UNIVERSITY OF MONTANA** | **USER:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_** |
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| \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Department Head: | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Name: |
| Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
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| Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |  |
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| \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Claudia D. Eccles  Assistant Vice President for Research Compliance |  |
| Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |  |

AGREEMENT INVALID UNLESS SIGNED BY ALL PARTIES LISTED ABOVE

**Schedule 1**

**UM Laboratory Facilities and Equipment Schedule and Rates**

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| --- | --- | --- |
| **Facility / Equipment** | **Monthly Rent** | **Annual Rent** |
| CP315 (Chemistry Lab.) One 5’x12’ bench station including access to one sink, one hood (4’ or 6’; non-exclusive use) and 25% of one flammable cabinet; 25 % use on annual average. | $25.00 (60 sq. ft. @ $20/sq. ft.) | $300.00 |
| CP314 (Microbiology Lab.) One 5’x12’ bench stations including access to one sink; 25 % use on annual average. | $25.00 (60 sq. ft. @ $20/sq. ft.) | $300.00 |
| CP312 (Office space) One desk and one chair (5’ x 3.3’), access to one internet port. | $39.50 (16.5 sq. ft. @ $20/sq. ft. + $12.00 port charge) | $474.00 |
| New Brunswick Scientific Bioflow 3000 fermenter (1 in 4 weeks) | $172.45 | $2069.40 |
| Sorval Contifuge Stratos Centrifuge (4 hrs/week) | $51.70 | $620.40 |
| NBS C24 Incubator shaker (50% of equipment, continuous use) | $29.76 | $357.12 |
| Biocold freezer BC-49F (25% of volume, continuous use) | $14.88 | $178.56 |
| Metler balance (occasional use, ~10% time) | $7.14 | $85.68 |
| Rotary evaporator (20% time) | $11.43 | $137.14 |
|  |  |  |
| **TOTAL** | **$376.83** | **$4,521.90** |

**If UM’s LAR facilities are needed, then a standard research cost-reimbursable contract template will be necessary to address the costs of using the LAR, including: per diem rate (2X the employee rate), cost associated with certifying USER's employees are eligible to enter the LAR, approval of external AUP protocol by IACUC and IBC protocol if necessary, cost of appropriate CITI exam(s), and cost of occupational screening and follow-up doctor examination, if necessary.**

**Schedule 2**

**Persons Authorized by USER**

**To Use Facilities and Equipment**