

Knight Campus Research Core Facilities Testing Services and Equipment Use Agreement

This Master Testing Equipment Use Agreement ("Agreement") is entered into by and between **Insert Company's Legal Name** ("You" or "Your" or "Company") for Your request for services from, or use of testing equipment at the Knight Campus Research Core Facilities ("KCRCF ") at the University of Oregon (collectively "University"). All services are provided on the terms and conditions set forth in this Agreement. (The KCRCF facilities include the KC Cleanroom, Bio Foundry, X-Ray Imaging, Makerspace, and Electronics Core Facilities.)

1. Purpose. The University, through KCRCF, will:

Perform the services and provide deliverables described in Section 15 of this Agreement. OR,

Allow You to use the testing equipment described in Section 16 of this Agreement ("Testing Equipment") on the dates and during the times set forth therein.

As requested by You, per Section 14 below.

Any deliverables shall be Your property and shall be deemed to be trade secrets to the extent permitted by law. If You are using Testing Equipment under this Agreement, You acknowledge and understand that You must receive training on the use of the Testing Equipment and use the Testing Equipment in accordance with KCRCF policy and procedure and under the supervision and at the direction of KCRCF staff. Company may use Testing Equipment only after KCRCF staff provide training and explicitly approves use. No use of equipment is permitted until a lab safety, equipment safety, or other relevant training is performed. KCRCF staff will keep records of users trained on specific instrumentation. You will not collaborate with University staff on Your research or University research while using the Testing Equipment. Any collaborative research will be done under a separate research agreement. Any results of Your use of the Testing Equipment shall be Your property and shall be deemed to be trade secrets to the extent permitted by law.

2. Term. This Agreement is effective on the date of last signature below ("Effective Date"). This agreement has a term of two hundred (200) days from the Effective Date and will automatically renew for consecutive two hundred (200) day terms until either party terminates this Agreement in accordance with Section 7 below.
3. Payment. You agree to pay University the amounts outlined in Sections 14 below. You agree to pay all invoices within 30 days of receipt. Payment will be made in lawful money of the United States of America. Payments not made in full within 30 days of the date of the invoice will bear simple interest at a rate of 8 percent per annum. Services and Testing Equipment usage will be billed on a monthly basis. KCRCF will not begin work on any services or deliverables and You will not receive access to Testing Equipment until this Agreement is signed by both Parties
4. Destruction of Materials/Data. Unless otherwise requested in writing (email accepted), all parts, samples, or other materials You provide KCRCF as part of the services will be disposed of or destroyed by KCRCF upon termination or expiration of this Agreement. Notwithstanding the foregoing, KCRF is not responsible for disposal or destruction of hazardous materials as defined in Section 11 herein. You must remove all hazardous materials from the University upon termination or expiration of the Agreement. All parts, samples, or other materials You leave at KCRCF facilities following the expiration or termination of this Agreement will be disposed of or destroyed by KCRCF at its discretion. You are responsible for downloading any data from any University cloud drives or links within ten (10) business days of receipt. KCRCF will not be responsible for retaining data that has already been distributed to You beyond that timeframe. Requests to replicate the services due to Your failure to download result data in accordance with this Section 4 will be billed to You at the current applicable rates pursuant to a new request for Services and Deliverables or Use of Testing Equipment under this Testing Services and Equipment Use Agreement.
5. Confidentiality.
 - a. "Confidential Information" shall mean any disclosed materials, written information, and data marked "Confidential" by You or non-written information and data disclosed by You that You identify at the time of Your disclosure to the University as confidential and You reduce to writing and transmit to the University within thirty (30) days of such non-written disclosure. Confidential Information must be disclosed for the purpose of determining if You wish to have KCRCF provide testing services or while KCRCF is providing testing services for You. Dissemination of Your Confidential Information by University shall be limited to those KCRCF employees of University whose duties justify their need to know such information, and who have agreed to maintain the confidential status of Confidential Information and to restrict use of the Confidential Information as set forth in this Agreement. University agrees to use the same degree of care it uses to protect its own confidential information and, to the extent permitted by law, to maintain as confidential for a period of three (3) years the Confidential Information You disclose to University under this Agreement from the date of disclosure.

- b. Nothing in this Agreement restricts University of the right to use or disclose any of the Confidential Information:
 - i. which is, at the time of disclosure, generally known to the trade or the public;
 - ii. which becomes at a later date generally known to the trade or to the public through no fault of University and then only after said later date;
 - iii. which is possessed by University before receipt thereof from You as demonstrated by written evidence, or is independently developed by University as demonstrated by written evidence;
 - iv. which is disclosed to University in good faith by a third party who has an independent right to such information; or
 - v. which is required by law, regulation or court order to be disclosed, including but not limited to Oregon Public Records Law. In the event that Confidential Information is required to be disclosed by University pursuant to this subsection of this Agreement, University shall notify Company prior to such disclosure to allow Company to use the exclusions or exemptions that are available under such law, regulation or court order. University shall furnish only that Confidential Information which is legally required and will exercise its best efforts to obtain reliable assurance that confidential treatment will be accorded Discloser's Confidential Information so disclosed.
- c. Nothing in this Agreement shall be construed as granting either an implied or express license or any rights express or implied to obtain any license to the Confidential Information or any patents, trademarks, or domain names arising from or disclosed in the Confidential Information. Your Confidential Information remains Your sole and exclusive property.
- d. University designates **Insert Contact Name** as the primary contact to receive Confidential Information from You.
- e. YOU MAKE NO REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, AS TO THE ACCURACY, UTILITY, RELIABILITY AND/OR SUITABILITY FOR ANY PURPOSE OF CONFIDENTIAL INFORMATION. UNIVERSITY AGREES YOU SHALL HAVE NO LIABILITY TO UNIVERSITY AND/OR ITS OFFICERS, DIRECTORS AND EMPLOYEES FOR ANY LOSS, COSTS, EXPENSES, DAMAGES AND/OR INJURIES (INCLUDING DEATH) ARISING OUT OF, RESULTING FROM AND/OR OCCURRING IN CONNECTION WITH RECIPIENT'S RECEIPT, USE OF AND/OR RELIANCE ON ANY SUCH INFORMATION INCLUDING, BUT NOT LIMITED TO, ANY LIABILITY FOR CONSEQUENTIAL, PUNITIVE, INCIDENTAL, EXEMPLARY AND/OR SPECIAL DAMAGES (INCLUDING, BUT NOT LIMITED TO, LOSS OF BUSINESS OPPORTUNITY AND/OR PROFIT).
- f. Export of Confidential Information. University agrees that it will comply with all export control laws and regulations with regards to the Confidential Information. You agree to identify any Confidential Information that is subject to export control laws or regulations before disclosing it to University and University may refuse to accept that information.
- g. University may not assign its obligations of confidentiality under this Agreement.
- 6. Intellectual Property. University has no ownership interest in the results of Your testing under this Agreement. Results of the testing You perform shall be Your property and shall be deemed to be trade secrets to the extent permitted by law. You have no rights to any testing results or other intellectual property You may come in contact with while at KCRCF facilities except the results from testing You perform on the products You bring.
- 7. Publicity. Neither party will use the name, service mark, trademark, or abbreviation thereof of the other party in any publicity, advertising, or news release without the prior written approval of the authorized representative of the other party.
- 8. Termination. Either party may terminate this Agreement upon written notice to the other at the address set forth Section 12, below. All reasonable costs and non-cancelable obligations incurred by the University at the time of termination shall be reimbursed by You.
 - a. If You fail to abide by lab polices, particularly safety practices, KCRCF in its sole discretion, may suspend or revoke Your access to the Equipment until KCRCF receives confirmation that You have been retrained on how to use KCRCF's facilities. Users also acknowledge they may also be asked to sign off that they have received safety training, and/or tool specific training prior or use of Testing Equipment in a core facility
 - b. University may terminate this Agreement for failure to pay if invoices are more than thirty (30) days past due. Termination under this provision does not waive Your obligation to pay such past due invoices.

9. Independent Contractor. The parties are independent contractors and not partners, joint venturers, or principal and agent. As required by law, You are responsible for obtaining and maintaining workers compensation insurance for Your employees that will use University Testing Equipment.
10. LIABILITY.
- a. **WHERE KCRCF IS PERFORMING SERVICES FOR YOU**, IN NO EVENT WILL THE UNIVERSITY BE RESPONSIBLE FOR ANY DAMAGES OR PENALTIES RESULTING FROM UNIVERSITY'S FAILURE TO PROVIDE OR DELAY IN PROVIDING THE SERVICES OR DELIVERABLES. IF A SERVICE OR DELIVERABLE IS FOUND, WITHIN SIX MONTHS OF INVOICE THEREFOR, TO BE DEFECTIVE OR INACCURATE, THE UNIVERSITY WILL PROVIDE THE SERVICE OR DELIVERABLE AGAIN AT NO COST TO YOU. THIS IS YOUR SOLE AND EXCLUSIVE REMEDY UNDER THIS AGREEMENT. THE SERVICES AND DELIVERABLES ARE PROVIDED "AS IS" AND UNIVERSITY EXPRESSLY DISCLAIMS ANY WARRANTIES EXISTING BY OPERATION OF LAW, INCLUDING BUT NOT LIMITED TO THOSE WHICH ARE EXPRESS OR IMPLIED. IN NO EVENT WILL UNIVERSITY BE LIABLE FOR ANY DIRECT, INDIRECT, SPECIAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES WHATSOEVER, NOR WILL THE UNIVERSITY'S AGGREGATE LIABILITY TO YOU EVER EXCEED THE AMOUNT PAID BY YOU UNDER THIS AGREEMENT. YOU AGREE TO INDEMNIFY AND HOLD HARMLESS UNIVERSITY AGAINST ANY CLAIMS ARISING OUT OF YOUR USE, COMMERCIAL SALE, OR DISTRIBUTION OF THE DELIVERABLES OR PRODUCTS OR PROCESSES RESULTING FROM OR YOUR RELIANCE UPON THE DELIVERABLES. YOU AGREE TO INDEMNIFY AND HOLD HARMLESS UNIVERSITY AGAINST ANY CLAIMS ARISING OUT OF YOUR USE, COMMERCIAL SALE, OR DISTRIBUTION OF THE DELIVERABLES OR PRODUCTS OR PROCESSES RESULTING FROM OR YOUR RELIANCE UPON THE DELIVERABLES.
- b. **WHERE YOU ARE USING TESTING EQUIPMENT**, UNIVERSITY WILL NOT BE RESPONSIBLE FOR ANY DAMAGES OR PENALTIES RESULTING FROM YOUR USE OF THE TESTING EQUIPMENT, INCLUDING BUT NOT LIMITED TO THE LOSS OR DAMAGE TO YOUR PRODUCT TO BE TESTED OR INJURY TO YOUR EMPLOYEES WHILE USING THE TESTING EQUIPMENT. IF A TESTING RESULT IS FOUND, WITHIN SIX MONTHS OF INVOICE THEREFOR, TO BE DEFECTIVE OR INACCURATE DUE TO A PROBLEM WITH THE TESTING EQUIPMENT OR IF YOU ARE UNABLE TO COMPLETE TESTING OF YOUR PRODUCT DUE TO CIRCUMSTANCES OUT OF YOUR CONTROL, UNIVERSITY WILL PROVIDE YOU WITH ACCESS TO USE THE TESTING EQUIPMENT AGAIN AT NO COST TO YOU. THIS IS YOUR SOLE AND EXCLUSIVE REMEDY UNDER THIS AGREEMENT. THE TESTING EQUIPMENT IS PROVIDED "AS IS" AND UNIVERSITY EXPRESSLY DISCLAIMS ANY WARRANTIES EXISTING BY OPERATION OF LAW, INCLUDING BUT NOT LIMITED TO THOSE WHICH ARE EXPRESS OR IMPLIED. IN NO EVENT WILL UNIVERSITY BE LIABLE FOR ANY DIRECT, INDIRECT, SPECIAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES WHATSOEVER, NOR WILL UNIVERSITY'S AGGREGATE LIABILITY TO YOU EVER EXCEED THE AMOUNT PAID BY YOU UNDER THIS AGREEMENT. YOU AGREE TO INDEMNIFY AND HOLD HARMLESS UNIVERSITY AGAINST ANY CLAIMS ARISING FROM INJURY TO PERSON OR DAMAGE TO PROPERTY AS A RESULT OF ANY ACT OR OMISSION DURING YOUR USE OF THE TESTING EQUIPMENT EXCEPT WHERE SUCH CLAIM ARISES FROM THE SOLE NEGLIGENCE OF UNIVERSITY. YOU FURTHER AGREE TO INDEMNIFY AND HOLD HARMLESS UNIVERSITY AGAINST ANY CLAIMS ARISING FROM INJURY TO PERSON OR DAMAGE TO PROPERTY AS A RESULT OF AN ACT OR OMISSION DURING YOUR USE, COMMERCIAL SALE, OR DISTRIBUTION OF THE DELIVERABLES, PRODUCTS OR PROCESSES RESULTING FROM OR BASED ON YOUR RELIANCE UPON THE RESULTS OF YOUR TESTING. YOU ARE RESPONSIBLE AND WILL REIMBURSE UNIVERSITY FOR ALL DAMAGE YOU SOLELY CAUSE TO ANY OF THE TESTING EQUIPMENT.
11. Hazardous Material. You will not test any products containing hazardous material or biological specimens under this Agreement without University's prior approval. A hazardous material or biological specimen is any material or specimen that is a physical hazard or health hazard pursuant to 19 CFR 1910.1200 and its appendices, as incorporated by OAR 437-002-0360.
12. Notices. Except as otherwise expressly provided in this Agreement, any communications between the Parties or notices to be given under this Contract will be given in writing by personal delivery, facsimile, email, or mailing the same, postage prepaid, to Contractor or University at the address or number as set forth below, or to such other addresses or numbers as either Party may indicate. Any communication or notice so addressed and mailed will be deemed to be received five days after mailing. Any communication or notice delivered by facsimile will be deemed to be given when receipt of the transmission is generated by the transmitting machine. To be effective against University, such facsimile transmission must be confirmed by telephone notice to University's supervising representative. Any communication or notice by personal delivery will be given when actually delivered. Any communication sent by email will be deemed received on the date that the email is acknowledged as received by recipient, with an automatic "read receipt" not constituting acknowledgment of an email for purposes of this section.

13. General. This Agreement is non-assignable and non-transferrable. Any legal proceeding instituted by You shall be in the courts of the state of Oregon. This Agreement shall be governed by the laws of the State of Oregon. You certify that You are duly authorized to enter into this Agreement and that this Agreement is binding upon You. This Agreement contains the entire expression of University's confidentiality obligations with respect to the Confidential Information. This Agreement may not be changed, modified, amended or supplemented, except by a written instrument signed by both parties. The unenforceability of any provision of this Agreement shall not affect the enforceability of any other provision of this Agreement. University will not be bound by any other terms and conditions contained in any purchase order, license, or any other document provided by You. Even if a University employee agrees to any additional terms or conditions, You acknowledge and agree that those terms and conditions are null and void and are not binding on the University. You acknowledge and agree that the terms and conditions of this Agreement represent the entire agreement of the Parties for the services provided under this Agreement.

14. Services and Deliverables or Use of Testing Equipment:

- a. Company agrees to pay KCRCF standard commercial rates or, if applicable, current published internship rates for all services.
- b. Projects, services, and deliverables will be requested in writing by a company representative. The rate for the project or service and deliverables will be quoted by a KCRCF staff member, then approved by the Company representative in writing before work begins. For self-use of equipment, hourly or day use rates will apply and may be found on KC Core Facilities websites, or upon request to a KCRCF staff member.

COMPANY:

Signature: _____
Name and Title: _____
Company: _____
Date: _____