

## Core Research Facilities Agreement

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Client Name:	University of Massachusetts Lowell		
Point of Contact:	Point of Contact: Theresa Hamelin, Business Manager		
Department:	Office of Vice Provost for Research Core Research Facilities		
Address:	One University Avenue		
City	State	Zip	Lowell, MA 01852
Telephone:	Telephone: 978-934-6421		
Email:	Email: <a href="mailto:crf@uml.edu">crf@uml.edu</a> Website: <a href="http://www.uml.edu/Research/cfr.aspx">www. uml.edu/Research/cfr.aspx</a>		

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University of Massachusetts Lowell (“UMass”) has developed highly specialized research expertise and has access to exceptional equipment and resources that are not generally available and makes these accessible in furtherance of the educational, research, public service and economic development missions of UMass in a manner consistent with its status as a tax-exempt, educational institution.

This Agreement provides the terms under which UMass agrees to provide certain Research Equipment and Facilities Services (“REFS”) to the above named company (“Client”). The specific tests, analyses and/or services to be conducted shall be specified using the specific core research facilities’ order form (“Order”). All Orders are subject to acceptance by UMass and must be approved by authorized representatives of both parties.

In consideration of the premises and mutual covenants set forth below, the parties hereto agree as follows:

1. **Order Management.** The services shall be directed by the Research Equipment Facilities and Services (“REFS”) Technical Contact identified on the Order.
2. **Contacts.** The REFS contact(s) will consult, as needed, with the Technical Representative of Client as provided by the Order. Client may contact the Business Manager-Core Research Facilities regarding any billing, service or administrative matters.
3. **Materials.** Where applicable, Client shall deliver to UMass sufficient amounts of the materials listed in the applicable Order (“Materials”), in the manner required and adhering to the guidelines specified on the Order and the requirements of Section 17. Client shall provide any information that is necessary to apprise UMass of the stability of the materials, proper storage and safe handling requirements, including a Material Safety Data Sheet (MSDS) or equivalent documentation. Client shall deliver the Materials in compliance with applicable laws and regulations. Upon completion of the Order, UMass shall return or dispose of any unused Materials at Client’s expense in the manner specified on the Order.
4. **Reports.** Upon completion of an Order, UMass will furnish a report as specified on the Order containing the test results, image analyses, etc. All data and test results contained in the report are the property of Client.
5. **Payments.** Client agrees to pay the service fees set forth in the Order. All payments shall be due no later than thirty (30) days from the date of invoice. Payments shall be made in U.S. Dollars and shall be net of taxes, duties or imposts of any kind. Payments shall be made to University of Massachusetts and in accordance with the payment instructions indicated on the invoice.
6. **Publications.** Client recognizes that UMass is a tax-exempt organization and must serve a public rather than a private interest and must maintain the discretion to present or publish, at its discretion, UMass’ methodologies developed or used in the Order.

7. Intellectual Property. Each party shall retain ownership to its own intellectual property. Ownership shall be determined by United States patent and copyright law where ownership follows the employer of the inventor or author.
8. Confidentiality. Client will not disclose confidential information to UMass under this Agreement.
9. Warranty. UMass shall perform all Orders in a professional and workmanlike manner. THE FOREGOING WARRANTY IS IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NONINFRINGEMENT OF A PATENT OR OTHER INTELLECTUAL PROPERTY RIGHT.
10. Limitation of Liability. IN NO EVENT SHALL UMASS BE LIABLE FOR ANY LOST PROFITS, LOSS OF USE, INDIRECT, PUNITIVE, INCIDENTAL OR CONSEQUENTIAL DAMAGES OF ANY KIND IN CONNECTION WITH OR ARISING OUT OF THIS AGREEMENT, EVEN IF UMASS HAS BEEN ADVISED OF THE POSSIBILITY OF THOSE DAMAGES. NOTWITHSTANDING THE FOREGOING, IN NO EVENT SHALL THE LIABILITY OF UMASS ARISING OUT OF THIS AGREEMENT EXCEED THE AMOUNTS ACTUALLY PAID UNDER THE APPLICABLE ORDER. If UMass commits a breach of the warranty set forth in Section 9, its sole responsibility, and Client's sole remedy shall be for UMass to rerun the affected portion of the Order.
11. Indemnification. Client shall indemnify, defend and hold harmless UMass and its trustees, officers, faculty, students, employees, and agents and their respective successors, heirs and assigns (the "Indemnitee") against any liability, damage, injury, loss, or expense (including reasonable attorneys' fees and expenses of litigation) incurred by or imposed upon Indemnitee in connection with any claims, suits, actions, demands or judgments ("Claims") arising out of any theory of liability (including without limitation actions in the form of tort, warranty, or strict liability and regardless of whether the action has any factual basis) arising out of the activities to be carried out pursuant to this Agreement or the manufacture, distribution, use, sales or other disposition by Client, or its distributors or customers, of any materials, data, results or reports that is the subject of an Order.
12. Safety Procedures. With respect to activities that would involve the physical presence of any employee or agent of Client on any UMass premises, Client agrees to observe and obey all applicable UMass policies and procedures, such as safety training, biosafety and chemical safety requirements, gowning requirements and material handling requirements. Client acknowledges and agrees that UMass will refuse access to all such employees and agents of Client who are unwilling or unable to comply.
13. Use of Premises and Equipment. With respect to activities that would involve the physical presence of any employee or agent of Client on any UMass premises, Client shall maintain, at its expense, workers' compensation insurance in compliance with applicable Federal and state laws, including employers liability insurance with limits of at least one million dollars (\$1,000,000) per occurrence. All insurance maintained by Licensee shall provide that such insurance for the benefit of the University shall be primary and the University's own insurance shall be non-contributing. Client agrees to provide proof of such insurance upon request. Client agrees that UMass shall have no liability for any losses or claims for personal injury sustained by or property damage attributed to an employee or agent of Client while using UMass facilities and/or equipment. With respect to activities that would involve the physical presence of any employee or agent of Client on any UMass premises, Client accepts complete liability for the acts, omissions and negligence of Client and its employees and agents while present on any UMass premises. Client shall indemnify, defend and hold harmless the Indemnitees (as defined in Section 11) from and against any and all injury, loss, claim, action, damage, or liability arising out of any act, failure to act, or negligence of Client, its employees or agents. Installation of equipment requires the prior approval of UMass (and pre-payment of any expenses) and Client is responsible for the installation and removal costs. Client shall provide sixty (60) days prior written notice of its intention to remove equipment. Upon expiration or termination, UMass has complete discretion regarding the removal of equipment abandoned on the premises.
14. Term; Renewals. Unless terminated earlier by the parties pursuant to the terms of this Agreement, this Agreement shall commence on the Effective Date and will continue for a period of one hundred (100) days ("Term"). The Term of this Agreement will automatically renew for a period of one hundred (100) days unless any party objects to

renewal of this Agreement upon written notice to the other party within thirty (30) days of the expiration of the Term. In no event shall this Agreement extend beyond five (5) years from the Effective Date, including the Term and any renewals.

15. Termination. If either party defaults in the performance of any of its material obligations under this Agreement, the non-defaulting party may give written notice of the default to the defaulting party. Unless the default is corrected within thirty (30) days after the notice, the notifying party may terminate this Agreement immediately upon written notice.
16. Survival. The obligations of the parties under Sections 9, 10, 11, 13, 16 and 19 survive the termination of this Agreement.
17. Export Control. The parties hereto acknowledge they are obligated to comply with United States Export Control laws and Regulations, including but not limited to the Export Administration Regulations and the International Traffic in Arms Regulations. The export of technology or technical data from the U.S. to foreign destinations, or the sharing of technical data with foreign persons in the U.S., may require a license issued by the U.S. Government. While UMass will endeavour to seek such licenses as may be necessary and appropriate, UMass cannot guarantee such licenses will be granted by the respective U.S. Government agency. Each Order shall be independently analysed for its export control compliance requirements (including analysis of requirements governing the delivery of Materials by one party to the other) by the UMass export control officer in cooperation with Technical Representative of Client as appropriate to the specific circumstances. No exchange of Materials or technical data should occur prior to such analysis being conducted and such Order being approved by the parties.
18. Use of Names. Client may not use the name or logo of UMass in any advertising or product promotional materials. Client agrees that it will not use the name or logo of UMass or of any employee of UMass in any press release or public announcement without the prior written approval of UMass. With permission, Client agrees to credit the use of the UMass facilities in any publication.
19. Governing Law. This Agreement shall be governed by the laws of the Commonwealth of Massachusetts.
20. Status. In the performance of all Research Equipment Facilities and Services, hereunder, UMass shall be deemed to be and shall be an independent contractor.
21. Entire Agreement. This Agreement, together with any Orders, constitutes the entire Agreement between parties with respect to the REFS and can be modified only by a written instrument signed by both parties which references this Agreement. Without limiting the foregoing, this Agreement shall not be amended or superseded by terms or conditions on any purchase order or other business form used by Client. In the event of a conflict between the terms of this Agreement, any Order or form, the terms of this Agreement control.

Each party has caused this Agreement to be executed by its duly authorized representative as of the Effective Date.

University of Massachusetts Lowell

By: \_\_\_\_\_

By: \_\_\_\_\_

Name:

Name: Linda Concino

Title:

Title: Director, Grants and Contracts Administration

Date:

Effective Date: