

**Agreement for Use of Biomedical Engineering Research Core Laboratory  
(for non-UH affiliated users)**

This Agreement for Use of Biomedical Engineering Research Core Laboratory for non-University of Houston users ("Agreement") is entered into between the University of Houston ("University"), on behalf of the Biomedical Engineering Research Core Laboratory ("BMERCL"), located in Room N181 Engineering Building 1 at the University and \_\_\_\_\_ ("Participant"). University and Participant may be referred to singularly as a "Party" and collectively as the "Parties."

**WHEREAS**, Participant desires to utilize equipment and instruments (collectively, "Equipment") at BMERCL to conduct independent research; and

**WHEREAS**, the University is amenable to providing use of the Equipment at BMERCL subject to the terms and conditions set forth below.

**NOW, THEREFORE**, the Parties, intending to be legally bound hereby and in consideration of the terms, provisions and covenants contained herein do agree as follows:

**Participant:**

Name:

Title:

Institution:

Address:

Phone numbers:

E-mail:

**Laboratory Liaison Contact:**

Name:

Title:

Institution:

Address:

Phone numbers:

E-mail:

**Term:** Participant shall be permitted to use the Equipment noted below at BMERCL, commencing on the Effective Date and ending on \_\_\_\_\_, 20\_\_\_. The Equipment shall be used on the following dates and times: [Please include dates/days of week/ and hours]\_\_\_\_\_.

**Personal.** This Agreement is personal to Participant, and Participant shall not assign this Agreement nor allow others to utilize the facility or Equipment without prior written consent of University. This Agreement will not be construed to create any partnership, joint venture or

other similar relationship between the Parties. Participant's right to use BMERCL shall not be construed as an endorsement by University or BMERCL of the research, data, or results produced or reported by Participant.

**Description of Activity:**

1. Participant will be analyzing its own items to be tested (e.g. biological, chemical, and/or physical samples) at BMERCL and will provide its own data analysis.
2. Participant notes the following samples it intends to test:

Biological: \_\_\_\_\_  
Radioactive: \_\_\_\_\_  
Chemical: \_\_\_\_\_  
Physical: \_\_\_\_\_  
Other: \_\_\_\_\_

3. Participant will provide the Laboratory Liaison Contact with not less than 48 hour advance written notice and description of any samples Participant will be testing at BMERCL in addition to or other than those identified above.
4. Participant acknowledges that Participant has submitted the Facility Use and Safety Agreement Form, including a description of the samples Participant plans to utilize for testing, for University's prior written approval and that such approval has been granted.

**Safety:**

1. Prior to using the facility, Participant will complete and show proof of completion of the appropriate laboratory safety and biosafety classes (as well as other appropriate Safety training as required for Participant's research), and the BMERCL safety exam. Participant shall also affirm its review of BMERCL's lab practices guide, safety rules, and policies and procedures, and shall provide Material Safety Data Sheet (MSDS) forms for all reagents. Applicable information is further available at <http://bmercl.uh.edu>.
2. Participant shall wear proper personal protective equipment suitable for the research being conducted in accordance with BMERCL procedures and commonly accepted laboratory practices for the Equipment being used and the type of research being conducted.
3. Participant shall not do or permit anything to be done at BMERCL, or bring or keep anything therein which will, in any way, increase the rate of fire or any other insurance, casualty or otherwise, at BMERCL, or invalidate or conflict with the fire or other insurance policies, casualty or otherwise, or increase any danger or hazard at BMERCL, its fixtures or on property kept therein, or obstruct or interfere with the rights of University or BMERCL or those of any other occupant at BMERCL, or in any other way injure University or any other occupant of BMERCL, or subject University or any other occupant of BMERCL to any liability for injury to persons or property, or otherwise interfere with the good order of BMERCL.
4. Participant shall conduct its business and control its agents or representatives in such a manner as not to create a nuisance or interfere with, annoy or disturb any other department or occupant of BMERCL or University in its management or operation of the

BMERCL facility. Participant agrees to be bound by reasonable rules and regulations that are promulgated by the University and BMERCL.

5. Participant shall comply with all applicable laws, regulations and University policies and procedures, including all state, federal and other safety protocols associated with Participant's research and use of the Equipment at BMERCL, including, but not limited to, those related to the handling, storage and disposal of hazardous materials.
6. Participant shall be liable for all actual and consequential damages to real and personal property arising from and incidental to Participant's use of BMERCL.

**Equipment:** Participant will be utilizing the following Equipment at BMERCL:

**BMERCL Instruments to be used (Please mark all that apply)**

- |   |  |
|---|--|
| <input type="checkbox"/> Alpha Innotech Micro Array Scanner               | <input type="checkbox"/> Millipore Milli-Q Water System    |
| <input type="checkbox"/> Alpha Innotech Gel Documentation System          | <input type="checkbox"/> Consolidated Autoclave/Sterilizer |
| <input type="checkbox"/> BMG-Labline Multimode Plate Reader               | <input type="checkbox"/> Nuair CO <sub>2</sub> Incubators  |
| <input type="checkbox"/> Stratagene Mx-3005P Real Time Q-PCR Machine      | <input type="checkbox"/> Nuair Biosafety Cabinet           |
| <input type="checkbox"/> Nano-Drop ND-1000 UV/Vis or ND-3300 Fluor.       | <input type="checkbox"/> Liquid Nitrogen Dewer             |
| <input type="checkbox"/> AccuSpin 3R - Table-top Refrigerated Centrifuge  | <input type="checkbox"/> -85°C Harris Ultra Low Freezer    |
| <input type="checkbox"/> Sorvall RC-5B Refrigerated Superspeed Centrifuge | <input type="checkbox"/> -20°C Frosted Freezer             |
| <input type="checkbox"/> Perkin-Elmer Scintillation Counter               | <input type="checkbox"/> +4°C Cold Box                     |
| <input type="checkbox"/> Automated Slide Stainer                          | <input type="checkbox"/> Olympus Upright Microscope        |
| <input type="checkbox"/> Shanon Cryotome (Frozen Sectioning)              | <input type="checkbox"/> Olympus Inverted Microscope       |
| <input type="checkbox"/> Shanon Microtome (Parafin or Plastic Sectioning) | <input type="checkbox"/> Olympus Dissecting Microscope     |
| <input type="checkbox"/> UV/Vis Spectrophotometer – HP 8453 Diode Array   | <input type="checkbox"/> Other: _____                      |
| <input type="checkbox"/> Nanolog Spectrofluorometer                       |  |

University will provide Participant access to the Equipment checked above with appropriate scheduling to be agreed upon in writing by the Participant and the Laboratory Liaison Contact. BMERCL will provide technical support on the Equipment. Participant will be onsite at BMERCL when its experiments are in progress.

**Compensation:** For the services provided by the University pursuant to this Agreement, Participant shall be invoiced quarterly according to the User Fees approved by the University of Houston for the Fiscal Year and provided as an addendum at the end of this Agreement.

**Parking:** Participant shall be subject to and shall abide by University's rules and regulations relating to the use of the parking areas located at <http://www.uh.edu/pts/parkvisitor.htm>.

The University shall not be assumed to be or held liable for any injury or damage resulting from violation of any parking agreement, rule, regulation or law by any other individual or entity. The University is not responsible for any damage or loss of motor vehicles or personal property contained in any motor vehicle on campus. Vehicle operators are responsible for familiarizing themselves with University parking rules and regulations.

**Participant's Acknowledgment and Assumption of Risk and Indemnity:**

1. All work performed by Participant and all property of Participant kept or stored at BMERCL will be at Participant's exclusive risk.
2. Participant hereby expressly agrees that University shall not be liable or responsible in any manner for any damage or injury to the person or property of Participant or the person or property of any other person or entity.
3. Participant acknowledges that work in a laboratory may expose Participant to hazards or risks that may result in illness, personal injury, or even death, and Participant fully understands and appreciates the nature of such hazards and risks. Such risks may include, but are not limited to, illness, personal injury, or death that is caused from engaging in research and testing, and related work, in a biomedical laboratory and being exposed to samples, reagents, chemicals, materials, tools and/or equipment, and fixtures, furniture, and equipment, that are commonly found in such a laboratory. These may include, but are not limited to, sharp blades for histological sample preparation, lasers and/or laser producing equipment, UV light, pressurized gases, radioactive materials, biological agents, animals, hazardous chemicals, and being exposed to various types and/or conditions of flooring which may be slippery. Participant understands that the University does not maintain any insurance policy covering Participant or Participant's activities at BMERCL, or any circumstances arising from or incidental to such activities. Participant acknowledges and represents his physical and mental abilities, with or without accommodation, enable Participant to participate in all aspects of the research activities at BMERCL and ability to be in the presence of, as well as use, the equipment, instruments, materials, and/or supplies at BMERCL.
4. Participant hereby accepts all risk to Participant's health, including injury or death, that may result from engaging in the research activities at BMERCL and hereby releases the University, its governing board, officers, employees, faculty members, and representatives and agents, from any and all liability to Participant, his personal representatives, estate, heirs, next of kin, and assigns for any and all claims and causes of action for loss of or damage to Participant's personal property and for any and all illness(es) or personal injury(ies) to Participant, including death, that may result from or occur during and as a result of the research or use of the BMERCL Equipment, whether caused by negligence of the University, its governing board, officers, employees, representatives, agents, or otherwise. Participant further agrees to be financially responsible for any medical bills incurred as a result of emergency medical treatment. Participant further acknowledges Participant has medical insurance coverage.
5. **Indemnity: To the fullest extent permitted by law, Participant shall indemnify and hold harmless the University, the University of Houston System, any of their governing board, officers, employees, faculty members, representatives, and agents from and against all liability, loss, expense (including reasonable litigation costs and attorney fees), or claims for injury or death, or damages arising out of Participant's negligent or intentional act(s) or omission(s) while participating in the research activities and use of Equipment at BMERCL (collectively, "Claim")**

**whether or not the Claim arises from the negligence, willful act, breach of contract or violation of law by Participant, its employees, or agents, or otherwise.**

6. **Hold Harmless:** In the event that BEMRCL or any part thereof is damaged by fire or if for any reason, including any act of God, which in the judgment of University renders the fulfillment of this Agreement by University impossible, Participant hereby expressly releases, discharges and will hold harmless University, its governing board, officers, employees, representatives, and agents from any and all demands, claims, actions and cause of action arising out of any of the foregoing.

**INSURANCE:**

1. Unless an appropriate University representative agrees to waive or modify the requirements as indicated in subsection (2) below, Participant shall comply with the following requirements ("Insurance Requirements"); Participant shall maintain Commercial General Liability insurance coverage of \$1,000,000 per occurrence. If, during the Term, Participant will enter University property, Participant shall also maintain the following insurance: (i) Worker's Compensation coverage as required by law with statutory limits for the State of Texas, including Employers Liability coverage of \$1, 00,000 per accident; (ii) Commercial Automobile Liability coverage of \$1,000,000 Combined Single Limit; All policies must contain a waiver of subrogation against University. Commercial General Liability and Commercial Automobile Liability policies must name University as Additional Insured. Participant shall provide Certificates of Insurance evidencing the Insurance Requirements prior to the start of work. Participant shall, at its expense insure Participant's personal property and equipment located at the University or in BMERCL. Participant acknowledges that neither BMERCL nor the University shall be responsible for carrying insurance of any kind on Participant's personal property and equipment and that the University and/or BMERCL shall not be obligated to repair or replace the same in the event of a fire or other casualty affecting the University, BMERCL or the facility.
2. If the Insurance Requirements are not applicable to the Services or if University otherwise chooses to waive or modify such requirements for purposes of this Agreement, the appropriate University representative may waive the requirements by initialing here or modify the insurance requirements by attaching a signed addendum with a modification of the insurance requirements approved by Risk Management and the Office of General Counsel.

**Publicity:** Participant shall not use University's name, logo or other likeness in any press release, marketing material or other announcement without University's prior written approval.

**Waiver:** Waiver by either Party of a breach or violation of any provision of this Agreement will not operate as a waiver of any subsequent breach.

**Survival:** Termination or expiration of this Agreement will not affect the Parties' rights or obligations that, by their nature and context, are intended to survive termination or expiration.

**Electronic Delivery:** Execution and delivery of this Agreement by exchange of email or fax copy containing the signature of a Party will constitute a valid and binding execution and delivery of this Agreement by such Party.

**Limitations:** Terms and conditions of this Agreement will only be binding on University to the extent permitted by the Constitution and laws of the State of Texas.

**Governing Law; Venue:** This Agreement will be governed by the laws of the State of Texas without regard to choice of law principles. In the event of any suit or action arising from this Agreement, the Parties consent to jurisdiction of the courts in Harris County, Texas.

**Miscellaneous:** This Agreement, together with any Attachment(s), constitutes the entire agreement between the Parties with respect to the subject matter hereof, and supersedes all prior contracts, agreements, representations and understandings made by the Parties relating to such subject matter. This Agreement may not be amended or otherwise modified except by the written agreement of both Parties. The invalidity or unenforceability of any provision(s) of this Agreement will not impair the validity and enforceability of the remaining provisions.

**Termination:** University may terminate this Agreement in writing at any time. The University will have the right, in its sole discretion, to terminate this Agreement and withdraw consent without notice should the University reasonably believe the samples, or any reagents used, will present potential hazards, or should Participant misuse the Equipment or privileges accorded under this Agreement.

**Notice:** Any notice required or permitted by this Agreement must be in writing and addressed to the Party at the address set forth below, or such other address as is subsequently specified in writing. Notices will be effective as of the date: (i) delivered by hand, (ii) delivered by national courier service or Registered/Certified Mail, postage prepaid, return receipt requested, or (iii) received by facsimile.

To University:
Department of Biomedical Engineering University of Houston Attn: _____ 3605 Cullen Blvd, Room 2027 Houston, Texas 77204-5060
<b>with a copy to:</b>
Office of the General Counsel University of Houston Attn: Contract Administration 311 E. Cullen, Ste. 311 Houston, TX 772042028

To Participant:
_____ Attn: _____ Address: _____ _____ _____
<b>with a copy to:</b>
_____ Attn: _____ Address: _____ _____ _____

**Breach Of Contract Claims:** To the extent Chapter 2260 of the Texas Government Code is applicable to this Agreement and not preempted by other law, the dispute resolution process provided by Chapter 2260 and the rules adopted by the Texas Attorney General will be used by the Parties to attempt to resolve any claim for breach of contract made by Participant against University that cannot be resolved in the ordinary course of business.

**Funding Contingency:** University's performance under this Agreement may be dependent upon appropriation of funds by the Texas State Legislature ("Legislature") and/or allocation of funds by University's Board of Regents ("Board"). If the Legislature fails to appropriate the necessary funds or the Board fails to allocate the necessary funds, University may terminate this Agreement without liability by providing written notice to Participant.

**WHEREFORE**, this Agreement shall become effective as of the date of the last party to sign (the “Effective Date”).

<b>UNIVERSITY:</b>
<b>Signature:</b> _____
<b>Printed Name:</b> _____
<b>Title:</b> _____
<b>Date:</b> _____

<b>PARTICIPANT:</b>
<b>Signature:</b> _____
<b>Printed Name:</b> _____
<b>Title:</b> _____
<b>Date:</b> _____

**Note: Modification of this Form requires approval of OGC**