Facilities and Equipment Use Agreement

Between

THE UNIVERSITY OF TEXAS AT ARLINGTON ("UTA")

Operator of the Life Science Building, at The University of Texas at Arlington

(hereinafter “UTA Facility”)

and

[full name]("[abbreviation]")

(Individually, a “Party” and Collectively, “the Parties”)

ARTICLE I. FACILITIES AND SCOPE OF WORK

UTA is a Texas state agency and a State Institution of Higher Education established under the laws of the State of Texas as an institution of The University of Texas System (“System”). [full name](“[abbreviation]”) is a [type, e.g., Limited Liability Company] established under the laws of , with its principal place of business located at .

UTA will make available to employees, consultants and representatives of [abbreviation] (hereinafter called “Participants”) identified in Attachment A, which is attached hereto and made a part of this Agreement, the certain UTA-designated facility, and any equipment, services, information and other material, as described in the Attachment A. Future Attachments referencing this Agreement may be created for identifying additional facilities and/or purposes during the term of this Agreement (see Article II) and shall be labeled subsequently as Attachment B, C, etc. Such additional Attachments will be considered to be part of this Agreement upon signatures of the Parties.

In order for [abbreviation] to gain access to and/or use of the UTA Facility, its Participants must first receive programmatic approval from the Dean of College of Science and available scheduling therein. To receive such approval, [abbreviation] will provide a proposal disclosing a functional non-proprietary description of the experimental work. The scope of work shall not be considered proprietary information and shall be publicly releasable.

ARTICLE II. TERM OF THE AGREEMENT

This Agreement shall be effective on or before [start date], and will remain in effect for a term of [term], unless terminated earlier as set forth herein. Any extension to the initial duration of this Agreement shall be negotiated by both parties prior to the expiration date. The Parties understand that, during the term of the Agreement, UTA may propose changes to the Agreement, and the Parties agree, in good faith, to consider amending the Agreement in accordance with any such UTA proposed changes.

ARTICLE III: COSTS AND EXPENSES

Each Party will bear its own costs and expenses associated with this Agreement. Funds payable from either Party as consideration, in whole or in part, for services, access or otherwise under this Agreement, shall be as stated in Attachment A, or for reimbursement for support services that may be provided by UTA or the UTA Facility upon request by [abbreviation] and at the discretion of UTA, and as mutually agreed in writing. Support services provided by the UTA Facility may include, for example, UTA Facility operation outside of normal working hours, but shall not include UTA or its faculty conduct of research, which must be separately negotiated and agreed to in writing. Costs associated with [abbreviation] support shall be agreed upon in advance and set forth in a project-specific Attachment B. UTA will invoice [abbreviation] for these costs, and [abbreviation] shall pay each invoice according to the instructions therein.

ARTICLE IV: ADMISSION REQUIREMENTS

[abbreviation] and Participants are subject to the administrative and technical guidelines and requirements, whether written or verbal, of UTA and will comply with all applicable rules of UTA with regard to admission (including remote access as well as physical access) to, and use of, any UTA building and property, including without limitation: parking facilities; the common areas and driveways; and the land situated beneath and any appurtenances thereto. [abbreviation] and Participants will also comply with all applicable rules of the UTA Facility, including safety rules for access to laboratory facilities, operating and health-physics procedures, environment protection, access to information, hours of work, and conduct. Participants shall execute any and all documents required by UTA acknowledging and agreeing to comply with such applicable rules of UTA. Participants will not be considered employees of UTA for any purpose.

[abbreviation] shall ensure that all Participants under this Agreement shall have criminal background checks completed and have no convictions, including deferred adjudication, for any crime of violence, crimes of a sexual nature, crime of theft, or similar crimes.

ARTICLE V: PROPERTY AND MATERIALS; [abbreviation] OWNED OR SUPPLIED

[abbreviation] may be permitted by UTA to furnish some or all of [abbreviation]’s own equipment, tooling, test apparatus, or materials listed in Attachment A (“[abbreviation] Property”) necessary to assist in the performance of [abbreviation] experiment(s) at the UTA Facility. All [abbreviation] Property permitted to be brought onto the UTA Facility premises by [abbreviation] under the foregoing sentence which are not donated to UTA under separate agreement or otherwise, shall remain [abbreviation] Property unless otherwise expressly agreed. Unless the Parties otherwise agree, all [abbreviation] Property under this Agreement will be removed by [abbreviation] within thirty (30) days of the earlier of termination of the specific project or expiration of this Agreement, or will be disposed of as directed by [abbreviation] at [abbreviation]’s expense. Notwithstanding the foregoing, any [abbreviation] Property that becomes integrated into the UTA Facility shall be the property of UTA or the State of Texas. [abbreviation] acknowledges that any [abbreviation] Property supplied by [abbreviation] may be damaged, consumed or lost. Unless otherwise specified in this Agreement or any Attachment thereto, [abbreviation] Property (including residues and/or other contaminated material) remaining after performance of the work or analysis will be removed in its then condition by [abbreviation] at [abbreviation] 's expense and in conformance with all applicable local, State and Federal regulations and laws. Upon completion of any project described under an Attachment to this Agreement, [abbreviation] will return the UTA Facility premises and equipment utilized hereunder, in their original condition except for normal wear and tear. [abbreviation] agrees that none of the work hereunder or any residues or contaminated material resulting therefrom will create any hazards to UTA personnel or property.

Other than as limited or authorized by the Constitution and laws of the State of Texas, UTA shall have no responsibility for [abbreviation] 's property or any personal property of Participants in UTA's possession.

ARTICLE VI: SCHEDULING

[abbreviation] understands that UTA will have sole responsibility and discretion for allocating and scheduling usage of the UTA Facility and UTA equipment needed for or involved under this Agreement.

**ARTICLE VII: INDEMNITY AND LIABILITY; INSURANCE**

**[ABBREVIATION] SHALL INDEMNIFY, DEFEND AND HOLD HARMLESS THE STATE OF TEXAS, UTA, AND THE UNIVERSITY OF TEXAS SYSTEM, AND THEIR REGENTS, OFFICERS, AGENTS, EMPLOYEES, STUDENTS, AND OTHERS HOLDING ACADEMIC APPOINTMENTS WITHIN THOSE INSTITUTIONS (SOMETIMES “INSTITUTIONS”), FROM ANY LIABILITY, LOSS, OR DAMAGE THEY MAY SUFFER AS A RESULT OF CLAIMS OR JUDGMENTS THAT ARISE FROM [ABBREVIATION]’S ACTIVITIES UNDER THIS AGREEMENT OR PARTICIPATION IN AND/OR PERFORMANCE OF ANY COLLABORATION, INCLUDING BUT NOT LIMITED TO THE USE AND COMMERCIALIZATION BY [ABBREVIATION] OF THE RESULTS OF ANY COLLABORATION OR SUBJECT INVENTION OR [ABBREVIATION] INVENTION OR (IF LICENSED) UTA INVENTION, INCLUDING USE AND COMMERCIALIZATION OF ANY INTELLECTUAL PROPERTY OR DELIVERABLES PROVIDED OR LICENSED HEREUNDER; PROVIDED THAT ANY INJURY THAT RESULTS FROM INSTITUTIONS’ NEGLIGENCE OR INTENTIONAL MISCONDUCT IS EXCLUDED FROM [ABBREVIATION]’S REQUIREMENT TO INDEMNIFY AND HOLD HARMLESS. [ABBREVIATION] SHALL EMPLOY ATTORNEYS OF ITS OWN SELECTION IN DEFENSE OF ANY CLAIM (SUBJECT TO THE STATUTORY DUTY OF THE TEXAS ATTORNEY GENERAL), AND WILL BE RESPONSIBLE FOR ALL EXPENSES THAT RESULT FROM EMPLOYING A VIGOROUS, DILIGENT DEFENSE OF INSTITUTIONS, REGARDLESS OF WHETHER ANY CLAIMS ARE RIGHTFULLY OR WRONGFULLY BROUGHT OR FILED. SUBJECT TO THE STATUTORY DUTY OF THE TEXAS ATTORNEY GENERAL, UTA SHALL FULLY COOPERATE WITH [ABBREVIATION] IN DEFENDING THE CLAIMS AND WILL MAKE NO COMPROMISE OR SETTLEMENT WITHOUT THE PRIOR WRITTEN APPROVAL OF [ABBREVIATION].**

**[ABBREVIATION] SHALL MAINTAIN IN FULL FORCE AND EFFECT DURING THE TERM OF THE AGREEMENT THE FOLLOWING INSURANCE COVERAGE: 1) COMPREHENSIVE COMMERCIAL GENERAL LIABILITY INSURANCE WITH LIMITS FOR BODILY INJURY AND PROPERTY DAMAGE OF NOT LESS THAN $1,000,000 PER OCCURRENCE; 2) COMMERCIAL AUTOMOBILE LIABILITY INSURANCE WITH LIMITS OF LIABILITY FOR BODILY INJURY AND PROPERTY DAMAGE OF NOT LESS THAN $1,000,000 PER OCCURRENCE; 3) WORKERS’ COMPENSATION INSURANCE WITH STATUTORY LIMITS (EXCEPT TO THE EXTENT THAT CONTRACTING PARTY HAS OPTED OUT OF THE WORKERS’ COMPENSATION INSURANCE SYSTEM IN TEXAS); and 4) COVERAGE FOR [ABBREVIATION]’S PROPERTY USED HEREUNDER. [ABBREVIATION] SHALL NAME THE UNIVERSITY OF TEXAS AT ARLINGTON, THE UNIVERSITY OF TEXAS SYSTEM BOARD OF REGENTS, THE UNIVERSITY OF TEXAS SYSTEM, THEIR OFFICERS, DIRECTORS, EMPLOYEES AND AGENTS, AS ADDITIONAL NAMED INSURED, UNDER SUCH COMMERCIAL GENERAL LIABILITY AND AUTO POLICY AS EVIDENCED BY SIGNED POLICY ENDORSEMENTS TO COVER LIABILITIES FOR WHICH [ABBREVIATION] IS OBLIGATED UNDER THIS AGREEMENT. [ABBREVIATION] AND ITS INSURER AGREE TO PROVIDE A COMPLETE WAIVER OF SUBROGATION AGAINST UTA AS EVIDENCED BY SIGNED POLICY ENDORSEMENTS. COMPANIES WRITING INSURANCE UNDER THIS ARTICLE MUST BE LICENSED TO DO BUSINESS IN THE STATE OF TEXAS. [ABBREVIATION] MUST PROVIDE UTA WITH A CERTIFICATE OF INSURANCE TO VERIFY REQUIRED COVERAGES UPON REQUEST.**

F. GENERAL DISCLAIMER

THE STATE OF TEXAS, UTA AND SYSTEM MAKE NO EXPRESS OR IMPLIED WARRANTY AS TO THE CONDITIONS OF THE UTA FACILITY AND EQUIPMENT FURNISHED HEREUNDER. IN ADDITION, THE STATE OF TEXAS, UTA AND SYSTEM MAKE NO EXPRESS OR IMPLIED WARRANTY AS TO THE RESEARCH OR ANY INTELLECTUAL PROPERTY, GENERATED INFORMATION, OR PRODUCT MADE OR DEVELOPED UNDER THIS AGREEMENT, OR THE OWNERSHIP, MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE OF THE RESEARCH OR RESULTING PRODUCT; THAT THE GOODS, SERVICES, MATERIALS, PRODUCTS, PROCESSES, INFORMATION, OR DATA TO BE FURNISHED HEREUNDER WILL ACCOMPLISH INTENDED RESULTS OR ARE SAFE FOR ANY PURPOSE INCLUDING THE INTENDED PURPOSE; OR THAT ANY OF THE ABOVE WILL NOT INTERFERE WITH PRIVATELY OWNED RIGHTS OF OTHERS THE STATE OF TEXAS, UTA AND SYSTEM SHALL NOT BE LIABLE FOR SPECIAL, CONSEQUENTIAL, OR INCIDENTAL DAMAGES ATTRIBUTED TO USE OF SUCH FACILITIES, RESEARCH OR RESULTING PRODUCT, INTELLECTUAL PROPERTY, GENERATED INFORMATION, OR PRODUCT MADE OR DELIVERED UNDER THIS AGREEMENT.

FURTHERMORE, NEITHER THE STATE OF TEXAS, UTA, OR SYSTEM, NOR PERSONS ACTING ON THEIR BEHALF, WILL BE RESPONSIBLE, IRRESPECTIVE OF CAUSE, FOR FAILURE TO FURNISH THE UTA FACILITY, FACILITIES, EQUIPMENT, MATERIAL, INFORMATION OR PERSONNEL UNDER THIS AGREEMENT AT ANY PARTICULAR TIME OR IN ANY PARTICULAR MANNER.

ARTICLE VIII: PATENT RIGHTS

A. Definitions

1. “Subject Invention” means any invention or discovery conceived or first actually reduced to practice directly in the course of or under this Agreement and an associated Attachment A, and expressly NOT including any invention or discovery reduced to practice or any data prepared under any other funding or research agreement of any kind with a third party or otherwise using UTA Facility or its resources.

B. Inventorship

Subject Inventions (if any) arising directly from the joint collaborative performance between and among UTA, [abbreviation] and Participants under this Facilities and Equipment Use Agreement and an associated Attachment A shall have their inventorship determined by the mutually agreed terms of the grant funding agreement under which [abbreviation] research at UTA Facility is conducted, or absent such terms, the application of US patent law, and UTA and [abbreviation] agree to negotiate their respective rights in Subject Inventions arising directly from the joint collaborative performance beforehand and pursuant to UTA policies and procedures.

ARTICLE IX: LABORATORY SITE ACCESS, SAFETY AND HEALTH

As a precondition to using UTA facilities or the UTA Facility, Participants must complete all UTA site access documents and requirements. [abbreviation] and Participant shall take all reasonable precautions in activities carried out under this Agreement to protect the safety and health of others and to protect the environment. Participants must comply with all applicable safety, health, access to information, security and environmental regulations and the requirements of UTA, including the specific requirements of the UTA Facility covered by this Agreement. In the event that [abbreviation] or any Participant fails to comply with any applicable or UTA regulations and requirements, UTA may, without prejudice to any other legal or contractual rights, issue an order stopping all or any part of [abbreviation]’s activities at the UTA Facility until there is compliance to the satisfaction of UTA.

ARTICLE X. PERSONNEL RELATIONSHIPS

Participants will remain employees or representatives of [abbreviation] at all times during their participation in the work under this Agreement, and shall not be considered employees of UTA or System or the State of Texas for any purpose. Participants shall be subject to the administrative and technical guidelines and requirements, whether written or verbal, of UTA during and in connection with the Participant’s activities under this Agreement.

ARTICLE XI: EXPORT CONTROLS

[abbreviation] acknowledges that the export of goods, materials or data may require some form of export control license from the U.S. Government and that failure to obtain such export control license may result in criminal liability under the laws of the United States.

ARTICLE XII: CONFIDENTIALITY; PUBLICATION AND ACADEMIC RIGHTS; PUBLICITY

A. CONFIDENTIAL INFORMATION.

a. The Parties may wish to disclose confidential information to each other in connection with work contemplated by this Agreement (“Confidential Information”). Confidential Information will be governed by the mutually agreed terms of the Grant Funding Agreement, attached hereto as Exhibit A, under which [abbreviation] research at UTA Facility is conducted, or absent such terms, as follows: Each Party will use reasonable efforts to prevent the disclosure of the other Party’s Confidential Information to third parties for a period of one (1) year from receipt, provided that the recipient Party’s obligation shall not apply to information that:

i. is not disclosed in writing and marked with an appropriate confidentiality legend, or if disclosed in non-written form, reduced to writing and marked with an appropriate confidentiality legend within thirty (30) days after disclosure;

ii. is already in the recipient Party’s possession at the time of disclosure;

iii. is or later becomes part of the public domain through no fault of the recipient Party;

iv. is received from a third party having no obligations of confidentiality to the disclosing Party;

v. is independently developed by the recipient Party; or

vi. is required by law or regulation to be disclosed.

b. In the event that information is required to be disclosed pursuant to subsection (vi) above, the Party required to make disclosure shall notify the other Party to allow that Party to assert whatever exclusions or exemptions may be available to it under such law or regulation, at the non-disclosing Party’s expense.

B. PUBLICATION AND ACADEMIC RIGHTS. Publication and academic rights will be governed by the mutually agreed terms of the Grant Funding Agreement, attached hereto as Exhibit A, under which [abbreviation] research at UTA Facility is conducted, or absent such terms, as follows: Each Party recognizes that under academic policy, the results of any collaborative research and development directly in the course of or under this Agreement and an associated Attachment must be publishable. [abbreviation] agrees that the individuals engaged in such collaborative research and development (if any) under this Agreement on behalf of UTA, shall be permitted (but not obligated) to present at symposia, national and international, or regional professional meetings, and to publish in journals, theses or dissertations, or otherwise of their own choosing, methods and results of the collaborative research and development under this Agreement and an associated Attachment; provided, however, in order to avoid loss of patent rights as a result of premature public disclosure of patentable information or inadvertent disclosure of Confidential Information, that [abbreviation] shall have been furnished copies of any proposed publication or presentation at least sixty (60) days in advance of the submission of such proposed publication or presentation to a journal, editor, or other third party. [abbreviation] shall have thirty (30) days, after receipt of said copies, to object to such proposed presentation or proposed publication because there is patentable subject matter and/or Confidential Information which needs protection contained therein. In the event that [abbreviation] makes such objection, UTA shall refrain from making such publication or presentation for a maximum of three (3) months from date of receipt of such objection in order for proper filing of patent application(s) with the United States Patent and Trademark Office and/or foreign patent office(s) directed to the patentable subject matter contained in the proposed publication or presentation. In any notification about claimed Confidential Information, [abbreviation] shall indicate with specificity the claimed Confidential Information and to what manner and degree [abbreviation] suggests that UTA may disclose Confidential Information. Notwithstanding the foregoing, results of collaborative research directly in the course of or under this Agreement and an associated Attachment are not Confidential Information, and UTA shall, after the time period referenced above has passed, have the final authority to determine the scope and content of any publications.

C. PUBLICITY. Neither Party hereto shall use directly or by implication the names of the other Party, nor any of the other Party’s affiliates or contractors, nor any abbreviations thereof, or of any staff member, faculty member, student, or employee of the other Party in connection with any products, publicity, promotion, financing, advertising, or other public disclosure without the prior written permission of the other Party, except as required by the Texas Public Information Act or other law or regulation.

ARTICLE XIII: DISPUTES

The parties will attempt to jointly resolve all disputes arising under this Agreement. Absent resolution, either Party may seek relief in a court of competent jurisdiction.

ARTICLE XIV. CONFLICT OF TERMS

This Agreement and any Exhibits and Attachments hereto constitute the entire agreement between the Parties. All prior negotiations between the Parties are merged in this Agreement, and there are no understandings or agreements other than those incorporated herein. This Agreement may not be modified except by written instrument signed by both parties. This document governs the work described in any Attachment(s). In the event of any conflict between the terms of this document and any other document issued by either Party, the terms of this document shall prevail.

ARTICLE XV: TERMINATION

Either Party may terminate this Agreement for any reason at any time by giving not less than thirty (30) days prior written notice to the other Party. Notice will be deemed made as of the day of receipt. The obligations of any clause of this Agreement, which by their nature extend beyond its termination, shall remain in full force and effect until fulfilled.

In addition, UTA may unilaterally terminate the Agreement by giving [abbreviation] written notice if: (1) [abbreviation] is in arrears in any of its payment obligations to UTA for a period of thirty (30) days or more, unless [abbreviation] has written approval by UTA to defray some or all of [abbreviation] ’s payment obligations; (2) [abbreviation] is in breach of one of [abbreviation] ’s obligations that cannot be remedied or as to which UTA has given [abbreviation] notice to remedy but which [abbreviation] have failed to remedy within fourteen (14) days of that notice, or (3) [abbreviation]’s conduct is incompatible with the intended research and development use of the UTA Facility. If UTA terminates this Agreement for any of these stated reasons, [abbreviation] is still liable for all of the outstanding obligations owed to UTA and must pay for additional services that [abbreviation] has used at UTA against all costs and losses that UTA incurs as a result of the termination.

XVI. MISCELLANEOUS

This agreement and/or any disputes hereunder will be governed by the laws of the State of Texas and shall be deemed to have been executed and entered into in the State of Texas.

No covenant or condition of the agreement may be waived except by written consent of the waiving party. Forbearance or indulgence by one parry in any regard whatsoever shall not constitute a waiver of the covenant or condition to be performed by the other party.

By signing this Agreement, the signatories attest that they are legally authorized to commit their respective institutions to this Agreement.

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| [abbreviation]  Signature: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Name:  Title:  Date:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | THE UNIVERSITY OF TEXAS AT ARLINGTON  Signature: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  John D. Hall  Vice President for Administration and Campus Operations  Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  APPROVED:  [UTA dept or college, e.g., College of Science]  The University of Texas at Arlington  Signature: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  NAME: \_\_\_\_\_\_\_\_\_\_\_, Ph.D.  Dean  Signature: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  NAME: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, Ph.D.  Chair, Department of [name] |

Statement of Work

This Statement of work is subject to and governed by the Facilities and Equipment Use Agreement

between The University of Texas at Arlington ("UTA") and [full name](“[abbreviation]”).

The objective of this project is to continue development and [describe technology, e.g., increased efficiency of the mobile wastewater treatment] technology developed by [abbreviation]. [abbreviation] is working with [funding agency, e.g., the Texas Emerging Technologies Fund (ETF) with the focus of harnessing interactions between Texas public institutions of higher education and industry]. While at UTA, pursuit of the mutual objectives will involve multiple internship positions for UTA students, the use of UTA service/charge centers and research collaborations with UTA laboratories.

The project is broken into two objectives.

1) Objective 1:

2) Objective 2:

Work toward Objectives 1 & 2 (above) will be performed under an expected Award subcontract (internships) made by [abbreviation] to UTA. Multiple graduate students under the direction of UTA professors (“Mentoring Professors”) will assist/perform this work. This research will take place in UTA research facilities licensed by [abbreviation], which will be located at [insert, e.g., room 329] of Life Science Building, The University of Texas at Arlington. [Room 329] of the Life Science Building includes use of a sink, water, and bench top. Glassware, stills, and chemical handling equipment common to a chemistry laboratory will be provided by [abbreviation]. [abbreviation] will obtain equipment not available to UTA or Mentoring Professors, and supply all consumable materials required for the research.

Description of Services: UTA will allow use of [Room 329] of the Life Science Building to [abbreviation] for the establishment of analytical parameters for waste water treatment with reagents and materials purchased by [abbreviation]. [abbreviation] will have limited access to other space at UTA Facility at UTA discretion during working hours and as approved by UTA. All [abbreviation] personnel with access to UTA Facility must obtain site-specific safety training. Equipment not currently owned and operated by the UTA and all consumable materials needed to perform testing, will be purchased and shipped by [abbreviation] at [abbreviation]’s sole expense. Personnel from UTA will be used to perform much of [abbreviation]’s research involving wastewater treatment and tester parameters.

Testing Commencement: Testing is expected to take approximately [term] from an anticipated start date on or before [start date] upon Award and acceptance of the terms of this Agreement by the parties by execution thereof.

Costs: UTA shall invoice [abbreviation] the total sum of NNNNNNN Dollars ($), as follows: percentage/all [number] up front, due and payable on or prior to [start date]. Payment shall be sent to:

Participants: Name/Title

[abbreviation] Property (Item and Description)